LEW WALLACE

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Our Cover

Lewis Wallace, author of *Ben Hur,* is the last in our series of eminent lawyer-soldiers of the Civil War period. Our historian, George R. Farnum, contributes another, the twenty-fourth, of his notable biographical sketches of the gallant members of the Bar who fought in the wars in which our country is engaged.

(Portrait from *Lew Wallace, An Autobiography* (1906) published by Harper & Bros.)

International Organization

Major Grenville Clark, prodigious worker in many good causes for the organized Bar, writes his views of the essentials of effective organization of the nations. In some respects he does not see eye to eye with the actions voted by the House of Delegates, but his contentions are always informative and well-stated.

The Lawyer and the War Agencies

Alexander Macdonald, of the Los Angeles Bar, in this issue challenges the profession to explain the fundamentals of our constitutional government to our citizens in order to prepare them to express an intelligent and considered viewpoint on the question of the necessity or desirability for the retention of administrative agencies when peace comes.

Books for Lawyers

Several current volumes of interest to members of the profession of law are reviewed.

House of Delegates

The third and fourth sessions of the House of Delegates, at the recent Sixty-Seventh Annual Meeting, are reported in this issue. Our November number chronicled the Assembly proceedings and the first two sessions of the House.

ANNUAL TOPICAL INDEX

In Volume 62 of the American Bar Association Reports there was printed a complete index of subjects dealt with in the first 23 volumes of the JOURNAL. In Volume 65 of the Reports and subsequent volumes, topical indexes of Volume XXIV of the JOURNAL and of each succeeding volume, have been printed. Reprints are available at $1 each of the topical index of the first 23 volumes.

Practising Lawyer's Guide to Law Magazines

Along with items of practical usefulness, probably the most interesting comment is upon Professor Thomas Reed Powell's caustic article in the *Harvard Law Review,* "dissenting" from the opinions in the Supreme Court in the controversial fire insurance case.

Reviews of Supreme Court Opinions

The Supreme Court handed down five opinions on November 6. No dissenting opinions were filed in those cases.

In *Pope* v. *U. S.,* the constitutional validity of an Act of Congress had been denied by the Court of Claims and the action was dismissed for lack of jurisdiction. That court has both judicial and administrative powers, and held that the Act was a Congressional interference with its judicial power. In the Supreme Court the jurisdiction of that court was challenged on the ground that it had no power to review the exercise of administrative power. The Supreme Court held that the decision of that very question involved judicial power and reversed the judgment, declaring that "Jurisdiction to decide is jurisdiction to make a wrong as well as a right decision."

In *Bates* v. *U. S.,* the conviction of one charged with criminal conspiracy to acquire and to transport gold bullion to Germany without a license, and to commit certain specified acts of forgery was reversed and remanded to the Circuit Court of Appeals.

In *Carolene Products Co.* v. *U. S.,* and another of similar import, the Federal Filled Milk Act was sustained against an attack upon its constitutionality.

The undisputed facts aver that skimmed milk filled with cotton seed oil and fish oil was equal in nutritional value to the natural milk and was in no respect injurious to health. Injunction against its exclusion from commerce was denied.

In *Walling* v. *Helmerich & Payne, Inc.,* an attempt to circumvent the effect of the Fair Labor Standards Act, by an ingenious device called the "split pay plan," failed to win the approval of the Court.

The Dumbarton Oaks Proposals—An Analysis

by Grenville Clark
OF THE NEW YORK BAR

I.

It should need no argument that we of the legal profession have a vital role to play in shaping our national policy towards world organization.

Normally and traditionally, the members of our profession are regarded as something more than advisers and advocates in private matters. This is not only true of those few lawyers—such men as Mr. Stimson and Mr. Hull, the Chief Justice and Mr. Justice Roberts—whose views command the attention of the whole country. It is true also of the combined influence of the tens of thousands of the rest of us. At the present moment, we can all rightly be expected to have considered views upon the merits of the Dumbarton Oaks proposals, and be prepared to expound them to our fellow-citizens.

Do these proposals offer reasonable assurance for the realization of the declared basic purpose—"to maintain international peace and security"? Or are the proposals so deficient that they offer no such assurance and must, therefore, be radically modified, sooner or later, if we are to achieve a stable world?

The answers plainly depend upon a searching and critical analysis of the main features, at least, of the outlined plan. This leads to an observation as to the spirit and usefulness of such an analysis at this time.

In announcing the proposals, Mr. Stettinius emphasized that they were merely "preliminary" and "exploratory"; and Mr. Hull stated that they were made available to permit "full study and discussion by the peoples of all countries." These statements certainly leave room both for criticism and constructive alternative suggestions; and the State Department has, I believe, conformed to this attitude. In other quarters, however, objection has been made to unfavorable criticism of the proposals or suggestions for their revision in any important respect. Some, indeed, have gone so far as to disparage as 'perfectionists' those who have raised even the most fundamental issues as to the effectiveness of the proposals.

Such an attitude will hardly commend itself to thoughtful persons, and least of all to lawyers, accustomed as we are, to form our individual opinions upon the basis of thorough analysis. We know that the question involved has baffled the wit of man for centuries. We should know that the solution will require a willingness to venture down new roads, of a sort corresponding to the bold thinking of our founders in 1787. And we should also know that the task will be well-nigh impossible unless all views are expressed and justly weighed.

The analysis should be scrupulously fair. The criticism should not be carping. It should concern itself with fundamentals and not with details. But, those conditions being observed, we lawyers will, I believe, wish to have the discussion guided by a single consideration—the desire to get at the truth as to the effectiveness of the proposals and as to any better alternatives for which we should strive.

This article—all too brief for so great a subject—is in that spirit.

II.

The proposals call for four "principal organs":

(1) A General Assembly, with one vote for each member country irrespective of population or resources.

(2) A Security Council of eleven members, of whom five, representing the United States, the Soviet Union, the United Kingdom, China and "in due course" France, would occupy "permanent seats." The other six would be chosen for rotating terms by the Assembly.

(3) An "International Court of Justice" organized either under the Statute of the present World Court "with such modifications as may be desirable," or under a new statute for which the present one "should be used as a basis."

(4) A Secretariat in charge of a Secretary-General, to "be elected by the General Assembly, on recommendation of the Security Council."

As compared with the League of Nations, new features are a Military Staff Committee (to assist the Council) and an Economic and Social Council, to function under the Assembly.

Lack of space forbids discussion of these auxiliary agencies. I must confine myself to the "principal organs" and especially to the functioning of the interrelated Assembly and Council, upon which all else depends.

With regard to the Assembly, the rule of one vote for each country

necessarily makes it a subordinate organ. Ironically, the application that has been made of the ambiguous doctrine of "sovereign equality," while giving an equal vote to each member, has the result of restricting the importance of the subjects upon which these votes can be cast of secondary importance. The voting arrangement permits no escape from this. For it would, indeed, be contrary to all reason and common sense to confer decisively important powers upon a body in which Panama and Luxembourg have the same votes as the United States and the Soviet Union, and in which Costa Rica and Abyssinia have an equal voice with the United Kingdom and France.

In recognition of this obvious situation, the Assembly, while permitted to discuss the maintenance of peace and express its general views, is given no powers of decision in that field. It is, in fact, definitely forbidden any initiative on any matter of this sort that is being dealt with by the Council. Nor would it have any direct part in enforcing the decisions of the judicial organ.

While it would be going too far to call the total functions of the Assembly inconsequential, it is fair to say that they are distinctly secondary to those of the Security Council, which is the real heart of the proposed Organization.

The Council is avowedly designed as the primary agency for the enforcement of peace. To that end, it would have power to "determine the existence of any threat to the peace," to "decide upon the measures to be taken to maintain or restore peace" and, in the last resort, "to take such action by air, naval or land forces as may be necessary to maintain or restore international peace and security." All member countries would be called upon to agree in advance "to make available to the Security Council, on its call" specific "numbers and types of forces and the nature of the facilities and assistance to be provided."

Thus, the *nominal* powers of the Security Council would be tremendous. The insistent question arises, however, as to whether the voting procedure will be such as to enable its ostensible authority to be exercised with reasonable assurance and promptness.

The official announcement on this point contains the following single sentence: "The question of voting procedure in the Security Council is still under consideration." It was, however, authoritatively reported (especially in the dispatches of James B. Reston in the New York *Times*) that the plan actually agreed upon would give a veto, in respect of military sanctions at least, to each of the permanent members, save that the question whether any such member could exercise the veto in its own case was left open. Since these reports came from correspondents of great experience and were never denied, it would be unreal to discuss the subject except on the assumption of their correctness.

On this premise, the proposition is that any dissenting representative of one of the Big Five may, by his sole vote, paralyze the whole world organization in the matter of military sanctions—at least where such aggressor is Germany or Japan or any nation other than one of the Big Five themselves. Assuming fifty member countries, it would not matter that their virtually unanimous belief was that military sanctions were essential to maintain peace, or that the Council itself voted for such sanctions by even ten to one. Incredible as it may seem, the dissent of *any one* of the Big Five, for any assigned reason or for no assigned reason, could nullify the opinion of practically the whole community of nations. It hardly needs argument that, under this voting procedure, the world could have little confidence in the prompt application of sanctions, however great the danger.

In respect of this unanimity rule, as well as other features, it is important to recognize the close resemblance of the Dumbarton proposals to the League of Nations. A recent editorial of the famous *Economist* of London correctly said: "It is impossible to read the proposals for a new international security organization drawn up at Dumbarton Oaks without realising how very closely the new League is modelled on the old. Whether it is a question of obligations or structure or procedure the 'United Nations Organization' is blood brother of the League of Nations."

It may fairly be asked, therefore, why, in framing new proposals, the planners could do no better than to adopt the basic weaknesses of an organization that so signally failed in its prime purpose—the prevention of major war. Is not the answer to be found largely in the fact that various of those responsible for the so-called 'American plan' at Dumbarton Oaks were long identified with the League of Nations and, even in the face of its tragic failure, were unable to take a new line?

The proposed set-up of a relatively weak Assembly and a Council that is nominally strong but is actually hamstrung, or at best hampered, by its voting procedure is the more surprising in view of the unanimous recognition that promptness and certainty are of the essence in making military sanctions an effective deterrent to aggression. It is when it comes to implementing this requirement that the gap appears. Everyone *says* that the machinery must be such as to function with reasonable assurance and without delay. But when the test came, the conferees simply failed, as I view it, to recommend institutions and procedures that give even reasonable promise of doing what is admittedly required.

Attempts may be made to defend the effectiveness of the Council even under the principle of unanimity; but I suggest that they cannot rest on reality. For is it not plain that there can be no assurance that the representatives of five great nations shall *all* be *promptly* in harmony as to a course of vital action in a crisis? Three or four out of five might well agree at once. All five might well agree after a delay. But experience tells us that where prompt decision

and action are essential, the rule of unanimity is at least extremely likely to defeat the purpose, especially where those concerned are the representatives of vast empires whose interests at the particular juncture may widely differ.

We must always remember that the primary purpose of the new Organization is not to win a new great struggle after an aggression has made headway, but either to forestall the struggle entirely or suppress it at an early stage. Having this in mind, the prime necessity is confidence that a decision can be reached—that the Organization will not be paralyzed when it is most needed. Can it seriously be asserted that this confidence would exist under a procedure which, when action is most imperative, makes inability to act a most likely outcome?

It may be said that this is too pessimistic a view because proof is lacking of the probable or likely failure of the Big Five to reach unanimous agreement in a crisis. No doubt it is true that such proof cannot be supplied in the sense that an engineer can predict by mathematical calculation that a badly designed bridge will collapse under a strain it is supposed to sustain. But political institutions may be badly designed as definitely as bridges. And if a mathematical demonstration is not available, experience and common sense can supply almost equal proof that the proposed voting procedure is ill-designed to the purpose in view.

Much current discussion relates to two other questions as to the functioning of the proposed Council: (1) Whether a permanent member should be allowed to veto sanctions in its own case; and (2) Whether the representative of the United States should have discretion to commit us to military sanctions without the consent of Congress in the particular instance.

No one can deny the importance of these questions. The privilege of a permanent member to veto sanctions even if the charges of aggression were against itself, and thus to put itself, so to speak, above the law, would violate both our practical sense and our sense of right. And with respect to the discretion of our representative, it is clear that the necessity of returning to Congress for instructions in every important crisis would weaken whatever confidence the rest of the world might otherwise have in our actual, rather than nominal, participation. Nevertheless, I suggest that concentration upon these two questions tends to obscure the more important obstacle that arises from the proposed unanimity rule. For if these problems were solved tomorrow, the difficulty would still remain that the Council could not impose military sanctions if a single one of the permanent members should dissent.

In recognition of the weakness caused by the proposed voting procedure, various suggestions are being made to mitigate it. A number of these have come to my attention, including a proposal that a two-thirds vote of the eleven members should be sufficient, provided that this two-thirds includes a majority of the five permanent members. I believe, however, that all such suggestions will prove impracticable, because once the decision is made to lodge the decisive power in so small a body as the proposed Council, it would be next to impossible to dispense with the veto power of any one of the five dominating interests. As I shall submit, the ultimate solution must be far more radical. It must place the power to make the great decisions in a much larger representative body constituted under a well-balanced plan of representation and operating by a majority vote, so that no one country, however powerful, would attempt to arrogate to itself the power to nullify the decisions of the great majority of the people of the world.

For the reasons stated, I am constrained to the view that an international organization based on the Dumbarton Oaks proposals would be a weak reed indeed to support the peace of the world.

III.

If the above analysis be sound, the question may fairly be asked, "What better plan have you to suggest?"

I propose: (1) That there should be a strong instead of a weak Assembly; and (2) That instead of constituting a Council with great and independent authority, any such body should function under policies prescribed by the Assembly, in much the same way as the executive committee of a corporation operates under the supervision of its directors.

The recommendation for a strong Assembly raises the crucial question of representation in that body. I believe, indeed, that a truly effective world organization will not be created until this admittedly difficult problem is solved.

In an article in the *Indiana Law Journal* for July, I sought a solution by proposing a concrete formula for the voting power of all the nations in a World Congress.

That formula, as now somewhat modified, would provide that the United States (with a population of 138,000,000), the British Commonwealth and Empire, as a whole (with 557,000,000) and the Soviet Union (with 193,000,000) should each have fifty votes; and that China (with 457,000,000) and France, and her empire as a whole (with 110,000,000), should each have thirty-five. The Big Five would thus have 220 votes. As to other member countries, the votes would be apportioned upon the basis of one for each 2,000,000 of population up to 14,000,000 and one for each 5,000,000 in excess of 14,000,000, subject, however, to two provisos. These would be: (a) That any member country with a population of over 2,000,000 would have not less than three representatives; and (b) That even the smallest country would have one vote.

To illustrate: The Netherlands and its former possession would have twenty votes; Brazil, twelve; Poland eleven; Belgium, nine; Czechoslovakia, seven; Greece, four; and Norway, three; with eight of the smallest

countries having one vote each. If and when Germany and Japan were admitted (with an assumed population of 80,000,000 each), they would each have twenty votes.

Under this formula, as applied to the present United Nations, the total number of representatives would be 348. Thus the 220 representatives of the Big Five would be in the clear majority. This is justified, however, both from the standpoint of relative population and power. As to the former, the combined population of the Big Five—1,455,000,000—would compare with 317,000,000 for all the other present United Nations; and would, in fact, be more than a majority of the estimated world population of 2,180,000,000. The disproportion between the military power and resources of the Big Five and the other member countries would be still greater. Accordingly the allotment of 128 votes to the smaller countries would, from the standpoint either of population or power, afford them full representation.

I propose that under a well-balanced plan of this general character, the representatives of the member countries would vote as individuals and that, just as in our own Congress, decisions should usually be taken by a majority vote.

As compared with the Dumbarton proposals, a vital departure would be that all the countries of the world desirous of sharing in the organization of peace would do so *directly* in full proportion to their place in the world, and on a basis of actual participation in the critical decisions. Another vital difference would be that machinery would be provided whereby affirmative decisions could be promptly reached, instead of being prevented or endangered by a requirement of unanimity among a small group of Powers.

I do not, of course, offer the above specific formula as necessarily the best possible. But I do insist that only under an application of this general conception of *unequal* voting rights can an enduring foundation be laid for world order.

In respect of the extent and distribution of the authority of the Organization, the solution of the problem of representation would open the way for the conferring of important powers upon the Assembly. It would then be possible to give it all the authority conferred by the Dumbarton proposals on both the Assembly and the Council.

It may be objected that so large a body as an Assembly of some 400 persons could not conveniently and quickly meet. But, I suggest that any such objection fails to take account of the present development and potentialities of long-range air transport. Even now, no inhabited place in the world is more than sixty hours flying time from any other. In ten years, both speed and comfort of air travel are certain to be improved. And it is no exaggeration that on an emergency call, most of the members of the World Congress could assemble within thirty-six hours, and virtually all within fifty hours, whether the meeting place were Washington, London or Moscow. Just as we need to get out of old ruts of thought in planning a world political organization, we need equally to revise our ideas as to the feasibility of a quick meeting of representatives of the whole world in a crisis. The two questions are, in fact, interwoven, because in a new air age, political machinery that would have been wholly impracticable ten years ago will be able to function ten years hence with speed and effectiveness.

This proposal for concentration of authority in a strong World Congress goes much deeper than the transfer of decisive powers from a small group to a large representative assembly. We must remember that the Dumbarton proposals embody not only an acquiescence in traditional ideas of "sovereignty" but, in the veto procedure for the Council, represent a re-affirmation of that fatal doctrine. In contrast, the approach just outlined involves substantial modification of the external sovereignty of all the member countries, within the definite field of the prevention and suppression of war. This proposal is deliberate and considered. Should not bitter experience have taught us at last that the price of *complete* sovereignty is nothing less than recurrent war?

IV.

In view of the above expressed opinion that adoption of the Dumbarton Oaks proposals would be a weak and disappointing step towards world order, the question may be asked: "Is the inference, then, that if the plan cannot be radically improved, it should be wholly rejected?"

I wish to make it clear that such is not my view. I think it not inconsistent to conclude that an international organization formed under the proposals would be ineffective, and yet consider its rejection still worse a misfortune. For this it is a sufficient reason that a second refusal by the United States even to attempt to organize the world for peace would have a devastating moral effect among all the nations.

We should not, I believe, abandon hope that drastic modifications to make the present tentative plan more effective can still be made. It is true that such alterations can only come from a change of heart and a fresh fundamental approach. But we need not take it for granted that even now this is beyond reach. In his impressive speech of November 6, Marshal Stalin declared: "There must not be a repetition of the sad memory of the League of Nations, which did not have either the right or the means to avert aggression." And since, upon analysis, the basic resemblance of the new plan to the old League will clearly appear, it is perhaps conceivable that a new initiative might come from the Soviet Union itself. Or it may be hoped that, recapturing the spirit of our forefathers, the United States might ask for a new start. Most Americans have underestimated the gravity of this war. Before the grim task ends, it may possibly be that our own people will demand that their leaders give a bolder lead than we assumed at Dumbarton Oaks.

At the least, we can urge that the United States put its "first team" in the field at the coming international conference, which should be in truth a World Constitutional Convention. At Dumbarton Oaks, our representatives, however capable and conscientious, were preponderantly diplomats and military men. We need a more broadly representative delegation—persons of imagination and authority, and drawn from any and all occupations. We can draw upon our leaders in education—such men as Ernest M. Hopkins, James B. Conant, Karl T. Compton, Harold W. Dodds, Charles Seymour and Robert G. Sproul. Others can be found in the other professions and among our most enlightened farm, labor and business leaders. Certainly we should not let the opportunity pass without searching the country for our ablest and best.

In the longer view, those of us who are earnestly, even passionately desirous of a really effective world organization—which means nearly all of us—can, I believe, best concentrate upon a few points.

(1) If the "general international organization," as adopted, is not far stronger and more promising than the Dumbarton Oaks plan, we can urge the necessity of persistent efforts for its amendment. Even if an almost hopelessly inadequate plan is adopted, there will be a great tendency to fall back into inertia. We can tell the people that unless this is resisted, they will have only themselves to blame for a renewal of the old vicious circle of alliances, spheres of influence, and suspicions that have produced two World Wars within a generation.

(2) We can preach the doctrine that unrestricted national sovereignty is the cause and ultimate condition of war. We can never cease explaining the incompatibility between insistence on unmodified "sovereignty" and the maintenance of peace. We can tell the people that a nation can no more claim to be a law unto itself than can an individual, if violence is to be averted; that we cannot have it both ways and that if we insist upon the retention of sovereignty, in the common and traditional sense, we cannot avoid the penalty of war.

(3) We can rightly stress the necessity of the juridical approach towards world order, through the extension of compulsory jurisdiction of a World Judicial Tribunal. And yet, in so doing, we can explain that a World Court, whatever its jurisdiction, can be no stronger than the authority behind the Court available for the enforcement of its judgments; and, consequently, that attention should equally be concentrated upon the creation of other institutions that can really act with promptness and certainty.

(4) We can advocate the abrogation of the constitutional provision whereby international engagements, even though approved by a vast majority of our people, may be vetoed by one vote more than one-third of the Senate; and the substitution of the approval of treaties by a majority of both Houses of Congress. The time is overdue for recognition of the fact that the present treaty provision is an anachronism which is not only unfair to ourselves but capable also of vast damage to the whole world. This treaty provision of our Constitution has already done deadly work in trimming down what might have come out of Dumbarton Oaks. If there is insufficient time to change this provision before the final plan comes up for ratification, we can at least institute a persistent campaign for its abrogation as soon as possible. Knowing that we have only just begun to come to grips with the problem of organization for peace, we can try to see to it that this particular obstacle shall not yet again obstruct the long effort to remove the scourge of war.

Finally, we should never forget that the influence of the legal profession in all of these matters is certain to be influential, and in some of them, controlling; and that with our power goes a corresponding responsibility.

An invitation extended by the Dallas Bar Association to hold the Mid-Year Meeting of the House of Delegates at Dallas, Texas, has been accepted, and the meeting has been set for Monday and Tuesday, March 5 and 6, 1945. The State Delegates will meet to make nominations for the offices of President, Secretary and Treasurer and for members of the Board of Governors from the First, Second, Sixth and Tenth Circuits on Tuesday morning, March 6. Announcement as to detailed arrangements will be mailed to all the members of the House in due course.

Lawyers Ask Retention of the World Court

Some forty-four American lawyers and judges have joined in writing to Secretary of State Cordell Hull their earnest hope that in perfecting the plans for international organization outlined at Dumbarton Oaks an acceptable way will be found for continuing the existing World Court with such adaptation of its Statute as may be necessary.

The list of signers of the letter is headed by Charles Evans Hughes and John Bassett Moore, both former judges of the World Court, and includes President David A. Simmons of the American Bar Association and ten former Presidents of the Association.

The Dumbarton Oaks proposals call for "an international court of justice," based on the present Statute or a new Statute. The signers of the letter state their fear that a new Statute would reopen issues which have been satisfactorily solved after years of debate and would imperil the net-work of hundreds of treaties, and bring no substantial improvement. They therefore ask that the full influence of the Government of the United States be exercised in favor of continuing the existing Court.

The letter to Secretary Hull reads as follows:

November 8, 1944

The Honorable Cordell Hull
Secretary of State
Washington, D. C.

Dear Mr. Secretary:

The announced proposals at Dumbarton Oaks include an "international court of justice" to exist under a statute which should be either "(a) the statute of the Permanent Court of International Justice, continued in force with such modifications as may be desirable or (b) a new statute in the preparation of which the statute of the Permanent Court of International Justice should be used as a basis."

The undersigned believe that every effort should be made to find an acceptable way of continuing the existing Court, with such adaptation of its Statute as may be necessary. Any other course would (1) involve a risk of reopening issues for which satisfactory solutions have been found after many years of debate; (2) imperil a net-work of hundreds of treaties concluded over a period of twenty years which confer jurisdiction on the existing Court; and (3) bring no substantial improvement over what has been accomplished by fifty years of unremitting effort.

For these reasons although we fully appreciate the necessity of agreement with other Governments, we venture to express the hope that the full influence of the Government of the United States will be exercised in favor of continuing the existing Court.

With great respect we are,
Yours very truly,

List of Signers of the Letter to Secretary Hull

James P. Alexander of Austin, Texas, Chief Justice of the Supreme Court of Texas
Arthur A. Ballantine of New York City, former Under-Secretary of the Treasury
Charles A. Beardsley of Oakland, California, a former president of the American Bar Association
Edwin Borchard, Professor of International Law, Yale Law School
C. C. Burlingham of New York City, a former president of The Association of the Bar of the City of New York
Dwight E. Campbell of Aberdeen, South Dakota, a former judge of the Supreme Court of South Dakota
Frederic R. Coudert of New York City, President of the American Society of International Law
John W. Davis of New York City, former Solicitor General of the United States and Ambassador to Great Britain, and a former president of the American Bar Association
John Foster Dulles of New York City, Vice-President of The Association of the Bar of the City of New York
George A. Finch, Director of the Carnegie Endowment, Washington, D. C.
Will W. Grant of Denver, a former president of the Colorado Bar Association
Learned Hand of New York City, Judge of the United States Circuit Court of Appeals
Joseph W. Henderson of Philadelphia, a former chairman of the Board of Governors of the Philadelphia Bar Association and a former president of the American Bar Association
Charles Evans Hughes, former Chief Justice of the United States
Joseph C. Hutcheson, Houston, Texas, Judge of the United States Circuit Court of Appeals
Charles C. Hyde, Hamilton Fish Professor of International Law and Diplomacy at Columbia University
Philip C. Jessup, Professor of International Law at Columbia University
Monte M. Lemann of New Orleans, a former president of the Louisiana State Bar Association
William Draper Lewis of Philadelphia, Director of the American Law Institute
Scott M. Loftin of Jacksonville, Florida, a former president of the American Bar Association
Calvert Magruder of Boston, Judge of the United States Circuit Court of Appeals
John Bassett Moore of New York City, former member of the Permanent Court of International Justice
George M. Morris of Washington, a former president of the American Bar Association
John J. Parker of Charlotte, North Carolina, Judge of the United States Circuit Court of Appeals
George Wharton Pepper of Philadelphia, former United States Senator
Orie L. Phillips of Denver, Judge of the United States Circuit Court of Appeals
Roscoe Pound, Cambridge, Mass., Dean Emeritus of the Harvard Law School
William L. Ransom of New York City, a former president of the American Bar Association; Chairman of the Association's Special Committee on International Organization
Carl B. Rix of Milwaukee, a former president of the Wisconsin Bar Association
Elihu Root, Jr., of New York City, a member of the American Society of International Law and the American Law Institute

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The Lawyer and the War Agencies: a Challenge

By Alexander Macdonald
OF THE LOS ANGELES BAR

The last few decades have seen a progressive increase in the number of administrative agencies established by the executive. This growth both in numbers and in functions mushroomed during the so-called period of depression that followed the speculative orgy that culminated in the crash of 1929. When war came it became a paramount necessity further to increase the power of the executive in order that a nation unprepared for war might weld itself into an efficient fighting machine as soon as possible. This brought about even more administrative bodies, bodies having powers greater than ever before accorded to or exercised by the executive in the history of our country.

There is more truth than jest in the statement that no one individual understands the entire labyrinth of these agencies. Only a few need be mentioned however, to give a clear picture of the extent to which the lives of our people are being regimented. First, there is the War Production Board. This body has and exercises the authority to prescribe what goods shall be made and in what quantities and out of what materials they shall be manufactured. The Office of Price Administration rations many articles and fixes price ceilings. The War Labor Board regulates wages. The War Manpower Commission directs manpower to plants doing work deemed essential to the war effort.

Present Regimentation Unavoidable

It must be conceded that much of this regimentation is unavoidable. We are engaged in what is called, and what truly is, total war; and this means that all of our resources and all of our people must be marshalled to the extent necessary for the supreme war effort that we must make and are making. For the first time in our national existence we have been faced with a condition of not having enough raw materials to make all of the end products of war, much less all the consumers' goods we would like to have. Consequently, totalitarian methods have necessarily been adopted for the duration of the war and six months thereafter. As a free people we have through Congress voluntarily brought this regimentation into being. But in so doing how many realize the extent to which we have departed from the form of government envisioned and put into being by our forefathers, and how many appreciate the difficulty we may have in withdrawing these enormous powers from the executive once the war is over? The problem of the part the WPB and numerous other administrative bodies now in existence will play in our postwar economy is truly a vital one and one in which every lawyer should have a deep and abiding interest. The American Bar Association and other bar associations have more or less constantly challenged government by administrative agencies for a number of years. To date, however, this challenge has in the main been centered on the methods by which these bodies operate. Conceding the soundness of many of the objections made to their procedures, prominent among which is the practice of the agency acting as both prosecutor and judge, the problem we are facing after the war with administrative agencies is a much more fundamental one.

Leadership Essential in Transition to Peacetime Economy

Let us see if we can visualize what the condition of affairs will be when peace comes. The pattern is reasonably clear now. There will be a national debt of astronomical proportions. We shall be confronted with the necessity of reconverting our factories now producing only end products of war to the manufacture of peacetime goods; the present tremendous shortage of such goods is increasing day by day. Several millions of young men will be discharged from the armed services and will be in need of employment. The reconversion of industry will threaten millions of workers in war plants with unemployment; and the speed of reconversion will be a large factor in determining the extent and duration of such unemployment. Taxes will be enormous. And finally, the gigantic problem of our relations with the family of nations in a world at peace will cry for a solution. It may be that some of these shocks to our

economy can be cushioned before the war ends, but, by and large, all will agree that the system of government provided for in our Constitution will be facing its greatest test. If this system is to be preserved, it will call for the strongest leadership the country can provide—leadership in government, leadership in industry, leadership in labor, leadership in the churches, leadership in the schools and last, but by no means least, leadership by the Bar. Leadership in high places will not be enough. It must come into being in every town, hamlet and group; in short, at the grass roots.

Problem of Relaxing Administrative Controls

Although many, if indeed not all, of these postwar problems are interrelated and although much of what follows is applicable to all the difficulties on the horizon, the present discussion will be limited to the operations of the WPB; because anything that can be said on the subject of the necessity or desirability of regimentation by the WPB, or some successor agency, in the postwar period applies in varying degrees to regimentation by other war agencies.

As has been pointed out, the present operations of the WPB in effect control all of the country's industry. It may be assumed that such control will continue at least until the war is over and six months thereafter. No one knows when the war will end, but if history is any precedent, we can be sure that when victory comes it will arrive with dramatic suddenness. This will mean that overnight, so to speak, there will be no further need for war products. More than half of all American industry is presently manufacturing war equipment. Although it may be assumed that as our victories mount some industry will be reconverted to the manufacture of peacetime goods, it may also be assumed that on the day the war ends there will still be a large percentage of our industry that is not reconverted. Manufacturers cannot retool their factories overnight for the manufacture of consumers' goods. In most instances it will take months. Consequently, there will necessarily occur what may be termed a transition period, and no informed person believes that transition will have been completed six months after the war, the present limitation upon the life of the WPB. Upon the elapse of this six months' period the problem will inevitably arise as to what extent, if at all, the WPB's control should be continued.

Complexity of Problem

The situation then to be dealt with will be a serious one, and one about which we should all be thinking right now. On the one hand to relax all administrative control over the distribution of raw materials in this period would result in a wild scramble and have the effect of allowing those manufacturers who were fortunate enough to be able to reconvert promptly to tie up critical materials to the detriment of the general public. On the other hand, the retention of administrative control over the distribution and use of materials for a longer period than absolutely necessary to prevent serious and lasting harm to our economy would be a blow to our system of free enterprise. The problem is complex and difficult and we might as well face the fact now that there is no solution available that will be entirely satisfactory to anyone, much less everyone, and that whatever solution is arrived at it will necessarily result in cases of hardship to some.

In viewing this problem, we all recognize its complexity, but the fundamental considerations behind any solution are simple. The one guiding thought that lies in the background is whether or not the Bill of Rights contained in our Constitution is to be scrapped or is to be adhered to. Just how essential to his freedom does the average individual consider the Bill of Rights? Does he consider these Constitutional provisions living guaranties of his liberty or does he regard them as a collection of antiquated proverbs or some outmoded rhetoric of a pre-horse and buggy era? Surely if he has the latter conception it can only be because he has not been made to realize that our forefathers fought the War of the Revolution in order to obtain these guaranties of the individual's rights vis-a-vis government.

The Bar's Duty to Enlighten Public Opinion

There is no force in our republic that is so great as public opinion and if there is one obligation that our profession has greater than any other, it is to see that public opinion in this difficult postwar period is an informed one. Our citizens particularly need such enlightenment at the present time in order to prepare them to express an intelligent and considered viewpoint on the question of the necessity or desirability of further regimentation when peace comes.

The rationalization of the choice between a free and a planned economy must be thorough; otherwise the inevitability of this choice which faces us may be obscured. Historical precedents show that the change from representative democratic government to dictatorship is insidious. There is no fanfare about it. Constitutional guaranties are not abolished by vote of the people. The totalitarian state comes into existence in violation of such guaranties and because democratic processes have broken down. The legislative and judicial branches of government during the process of coming under control of the executive remain nominally independent until the moment the coup d'etat is accomplished. John Q. Citizen frequently does not realize the extent to which he has been deprived of his liberties until he runs afoul of the dictator's secret police. All of this must be demonstrated to our people; they must be awakened to the truth that it "can happen here" unless a wide-awake intelligent citizenry is alive to the true significance of postwar problems.

Tendency of Many to Seek Economic Security from Government

In the 1920's our country achieved a standard of living higher than any ever known before in any part of the world. Automobiles, electric refrigerators and many other articles theretofore unavailable to any but the wealthy were by mass production and free competition priced so that they were within the reach of practically all of us. Having reached this high standard of living, articles theretofore thought of as luxuries came to be considered necessities. Consequently, when the depression came on the heels of the crash in 1929, our people had become soft and of a mind to demand that government protect them from the hardships that were the inevitable aftermath of the speculative excesses of the late 1920's. Human nature has always been the same throughout the ages, and apparently one strange thing about the human being is that it requires more character for him to withstand prosperity than it does adversity. Struggle with adversity has the effect of building character, whereas too much prosperity seems to have just the opposite effect. This is just as true now as it was in the days of the Roman Empire. To paraphrase that famous character of fiction, David Harum—it's a good thing for a dog to have fleas because it keeps him from being sorry for himself because he's a dog.

Regimentation Will Continue until Public Opinion Demands Its Removal

Many bitterly criticize the New Deal. This is no occasion for the discussion of politics, but if we are realistic and honest with ourselves we will admit that the New Deal came into being, by and large, because the people wanted it. Some wise man once said that a people get just as good government as they are entitled to and no better.

It must be frankly recognized, therefore, that after the war these war agencies that are presently regimenting the nation will never have any of their powers removed or cut down unless or until public opinion demands it. But will the public make such a demand? Let us explore this for a moment. The temptation to keep these war agencies in existence will arise out of the many serious disturbances in our economy that will occur in the transition period and the desire on the part of the people to be protected as much as possible by government from the harm resulting therefrom. It must be admitted that, on a short time basis at any rate, some measure of protection can and should be given by these administrative bodies; but let us be clear on one fact, and that is that the sooner we are able to curtail and finally eliminate the exercise of power by these war emergency agencies the better it will be for us. For it is certain that we cannot have material security from the cradle to the grave and at the same time enjoy the freedom guaranteed to us by the Constitution. If it were possible to demonstrate this truth to every adult in the country, there would be no question but that a strong public opinion would insist that government abolish and restrict the operations of the existing war agencies in peacetime as soon as possible. Although we have been gross materialists in this nation for many years, it is a certainty that our spiritual side is not dead; at the worst it is merely dormant. It was no mere aphorism when Patrick Henry made his famous declaration—"Give me liberty or give me death." That was the vibrant creed of the patriots who found the strength and will to throw off the executive tyranny of George III. Our people still believe in that creed and all they need is to be awakened.

Loss of Freedom Is the Price of Economic Security

This pioneer spirit will never be brought to life, however, unless our leaders emphasize again and again the indisputable fact that it is impossible to have full security and full freedom at the same time. In this task the Bar can play an indispensable part. Certainly no group is better qualified than the legal profession to explain the fundamentals of our constitutional government to our citizens. Nor is any group better able to lay before them the inevitable choice between the tyranny that is the inevitable end product of continued regimentation by the executive and the freedom of the individual, which freedom admittedly entails not only the suffering of hardships but the absence of any real guarantee of security other than that which the individual is able to provide for himself by his own enterprise.

A lot has been said recently about postwar planning. It is essential that the people themselves do the fundamentals of this planning and that the members of the Bar in all of our communities, great and small, aid them by hammering home, whenever the opportunity presents itself, the everlasting truth that we must choose between liberty and what is euphemistically termed security—we can't have both. In preaching this gospel we should attempt to convince those with whom we talk that absolute security is a will-o'-the-wisp—an illusion. About all we can hope to obtain through regimentation is a small modicum of economic security. Is the game worth the candle? What would be the price? It would be the loss of our real security, our spiritual security, the security of the freedom of the individual guaranteed to us by the Bill of Rights, the security, if you please, we are waging this war to obtain.

The Bar's Opportunity

"But," it may be asked, "just when and exactly to what extent should the powers of the WPB or any other war agency be curtailed or abolished?" The question is a good one and one which we should presently ponder. It cannot be answered now, however, nor can it be answered intelligently until the time for such determination arrives and the desirability or undesirability of the retention of a specific administrative power or

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"Books for Lawyers"

PEACE THROUGH LAW, *by Hans Kelsen. 1944. Chapel Hill: The University of North Carolina Press. Pages xii, 155. $2.00.* The contributions of the author of this book to the theory of international law are well-known in professional circles. Any new discussion by him is likely to be both interesting and stimulating, especially when it is devoted to such problems as the possibility of assuring peace through an international organization centered around an international court, and the desirability of punishing the individuals responsible for the recent violations of international law.

Professor Kelsen thinks that an international organization need not concern itself with social and economic problems but should concentrate solely on the political means for the prevention of future wars, and that all political problems could be solved if an international court is given power to decide all inter-State disputes, both legal and political. Starting with the assumption that any dispute can be *decided* by application to it of a principle of international law, the author arrives at the conclusion that all disputes can be *settled* by a final decision of an international court. Though he recognizes the fact that in many cases there is no disagreement between the parties to the dispute with respect to an applicable principle of law, the issue being confined to the question whether in that particular situation the law should not be changed (pp. 29-30), he seems to imply that a decision of the court upon the applicability of the undisputed principle of law would automatically settle the dispute as to the necessity of a change in the principle. In fact, a decision of a court in such a case does not advance at all the final settlement of the actual dispute; a court can only pronounce upon a side-issue and not upon the merits of the claim for revision of the law.

It seems that the author has realized that such an objection may be raised to his proposal. He attempts to meet it by stating that once a court with compulsory jurisdiction is established, it will "adapt the positive law" to the judges' idea of "justice and equity," by which means "a new obligation may be imposed and a new right conferred upon the contesting States" (p. 45). At the same time the author bases his argument for a court endowed with compulsory jurisdiction on the fact that international tribunals are "competent only to apply positive international law to the disputes they have to settle, that they cannot impose by their decisions new obligations or confer new rights upon the contesting States" thus warding off "the possibility of the imposition of new obligations upon an unwilling State" (p. 44). It does not seem possible to reconcile these two statements without a logical somersault, and the author seems to have arrived at a point where choice lies between a court applying international law and endowed with obligatory jurisdiction and a court creating international law but without any jurisdiction as no State would probably dare to submit to its decision. If the first solution is preferred, it is obvious that such a court will not be able to solve all disputes and its jurisdiction will extend only to some limited class of disputes. If that class could be clearly defined and an objective test were devised, great progress would be possible. Mere throwing of all distinctions overboard does not serve any practical purpose, and it might result in throwing overboard the court itself.

A redraft of the Statute of the Permanent Court of International Justice is offered along the line of the proposals, with additional "improvements." One of these "improvements," a new system of election of judges, in part by different private institutions, is highly artificial; and it may be doubted whether it would assure the independence of the judges any better than the present system.

The second part of the volume deals with the punishment of war crimes as a deterrent from future wars. The author finds it possible for international law to deal with crimes of individuals, and he gives suggestions for treaty stipulations imposing individual responsibility for violations of international law on (a) persons who as organs of a State were responsible for a violation by that State of the obligation not to resort to war or reprisals, (b) persons guilty of violations of the laws of warfare. He contemplates also the possibility of appeal to an international court from a judgment of a national court in a case where an individual has been tried before the latter court "for having violated international law or a national law the purpose of which is to enforce international law" (pp. 145-6). The author would confer jurisdiction in such cases on the same court which he would endow with jurisdiction over all inter-State disputes, or on a chamber of that court. It would seem, however, that the extension of jurisdiction of the general court in this direction would warp the character of that court, and any difficulties in the exercise of this jurisdiction by that court might influence adversely its entire future.

When the fate of achievements of generations of effort towards establishing and maintaining an international court hangs in the balance, exorbitant claims for all-embracing jurisdiction might send the whole structure tumbling down.

The question today seems to be not how much can we extend the field of international adjudication but rather how can we maintain what we have. It is a pity that Professor Kelsen, the master of legal technique of international relations, has not addressed himself to that burning question. He has preferred instead to blaze paths into a wilderness which for a long time yet will remain without influence on the general development of world affairs.

Louis B. Sohn
Cambridge, Mass.

CITY LAWYER: *The Autobiography of a Law Practice, by Arthur Garfield Hays of the New York Bar. New York: Simon and Schuster.* Pp. xiii, 484. $3. Many lawyers who do not know him probably have some mild curiosity about the personality of the author of this volume. They have become familiar with his name because of his frequent participation in sensational "civil liberties" cases in various parts of the country. Not a few of them have received letters from him, requesting the use of their names on briefs which he has prepared.

What gives him the inclination for, and how does he find time to indulge in, this type of litigation? Is he a crusader or an exhibitionist, seeking the publicity he seems so keenly to enjoy? Is he an active, practicing lawyer or a dilettante who has been admitted to the Bar?

City Lawyer only partly answers these questions—only partly because it is not and does not purport to be the autobiography of Mr. Hays. Rather it is, as the subtitle indicates, the story of his law practice. Even this is not complete, for Mr. Hays has dealt with certain phases of it in his earlier books: *Let Freedom Ring, Trial by Prejudice,* and *Democracy Works.*

One gains the impression—although a "portrait of the artist" sometimes lacks fidelity—that Mr. Hays follows the vocation of practicing law in the usual sense and the avocation of championing civil rights in the courts. In the present volume he is concerned chiefly, although not entirely, with his vocation.

Some of his cases have, for lawyers at least, considerable intrinsic interest. This is notably true of the prize cases he handled (before our entry) during the World War I. His account of his experiences in London in this connection will evoke reminiscent smiles from those of his readers who have dealt with English solicitors, barristers, and officials, and will have the charm of novelty for others.

More familiar to the average lawyer but almost equally interesting are the *Wendel-Will* case and the *Gross* case, in which the court was called upon to determine which of several persons who were killed in the same accident survived longest thus posing the question as to when death ensues. Mr. Hays has written the stories of these and a number of other of his cases clearly and entertainingly, although he is prone to quote somewhat too extensively from his own cross-examinations and summations.

The only civil liberties case of which Mr. Hays writes in any detail is the *Reichstag-fire* trial and from his account it is obvious that his own participation was both minor and entirely futile. However, the fact that he unhesitatingly decided to go to Germany for this trial and promptly carried out his decision does shed not a little light upon his character.

More is afforded by the avowedly autobiographical chapters: "Before the Practice of Law", the story of childhood and youth, "Getting Started", canny comments on building a law practice; "Marriage and Divorce", views and professional and to some extent personal experiences in the realm of matrimony; "Pictures on My Office Walls", illustrating episodes of a varied career; and finally "Our Kind", a succinct but illuminating credo.

A portrait emerges: An unrepentant disciple of Clarence Darrow, "the greatest man I ever met" (p. 208), believing implicitly that men are irresistibly moved by forces beyond their control and that crimes are misfortunes; a consistent individualist, somewhat impatient of restraints whether those of the criminal code punishing the poor and ignorant, or those of the SEC regulating the rich and powerful; a successful lawyer with a lucrative practice, able frequently to participate in the kind of non-profitable cases he really enjoys; an advocate who finds no difficulty in maintaining his cause without relinquishing his personal beliefs ("In practically all my civil liberties cases I wholly disapprove of my clients views"—p. 52); by his own definition neither a radical nor a conservative but that *rara avis*, a "liberal," as he regards that term, although that type of "liberal" may be out-moded and nearly extinct; a man without inhibitions, a seeker of the spotlight, who delights in fighting for civil liberties, not only because he believes in them but because "it's just about the best fun there is in life" (p. xi.).

WALTER P. ARMSTRONG
Memphis, Tenn.

THE LEAGUE TO ENFORCE PEACE: By RUHL J. BARTLETT. *1944. Chapel Hill: The University of North Carolina Press. 264 pages. $2.50.*

THE TRUTH WILL KEEP US FREE: *Who defeated ratification of the League of Nations? By Roscoe C. McCulloch. 1944. Columbus, Ohio: Privately printed; obtainable from the author at 961 Grandview Avenue, Columbus. 185 pages. Paper bound.*

The "bogey man" as to international security organization, based on the Dumbarton Oaks Conversations or otherwise, is the constitutional provision for the ratification of treaties by a two-thirds vote of the United States Senate. Disregarding the manifest probabilities that "minority" resistance to American participation in such an organization could be made consequential only by major mistakes of plan or tactics on the part of its sponsors, and oblivious also to the fact that American adherence to such an organization will be "born

to trouble" unless it has the wholehearted support of both branches of the Congress as well as of the people, those who seek to impair the independence and prestige of the legislative branch of government, particularly of the Senate, interject into current discussions at every phase the warning that "the goblins will get you if you don't watch out". More than a few well-meaning folks are led to echo these fears, because of what took place as to the League of Nations in 1920.

Here are "both sides" of that historic controversy. Professor Bartlett, of Tufts College, a careful historian, writes of the strong popular support which was mobilized during the hopeful years 1914 to 1920 by idealist and realist volunteers of the League to Enforce Peace, with Ex-President Taft as its active head, and the League of Free Nations Association, a creative group, which collaborated in the joint Victory Program that promised so much. Then Mr. Bartlett tells his version of how the plans for American membership in the League were wrecked and who had the key roles in the wrecking. Personal and political hostility to Woodrow Wilson and to his attitude toward the Senate emerges as ascendant motivation.

Former United States Senator McCulloch, who was in the House of Representatives while the League was being debated in the Senate, goes to the documents and puts together a very different appraisal of the responsibility, which disregards however, the fact that many of the documents were plainly "self-serving," "for the record" for posterity, and less than candid. He maintains that the demand of the President that the Treaty must be accepted by the Senate "without amendments and without reservations" "sealed its doom." Contemporary correspondence of Elihu Root and others is quoted to show that the "reservations" were designed to safeguard "American sovereignty, American independence," etc. All this has a familiar ring, in the present tense, although the book disavows any "isolationism." All things considered, Professor Bartlett puts together the better factual argument as to responsibility.

Happily a recurrence of like controversy seems to have been avoided by the enlightened course of the leaders of both political parties, but these two brochures may have an interest for those who are studying the proposals for changing the constitutional method of ratifying treaties.

WALTER CLARK: FIGHTING JUDGE: *By Aubrey Lee Brooks. 1944: Chapel Hill: The University of North Carolina Press. 288 pages. $3.00.*—The venerable head of a leading Greensboro law firm, who was president of the North Carolina Bar Association twenty-seven years ago, has written a militant and understanding book on the controversial figure of the "fighting judge", the saga of whose gallant career as a lawyer-soldier was so admirably told by George Farnum in the September JOURNAL (page 515), in connection with the cover portrait. The dedication of the biography is its key-note: "To the Supreme Court of the United States which now reflects the views of Walter Clark".

The veteran of many courtroom battles measurably proves his case for his hero. A crusader by temperament, strong in his sense of "*social* justice", Clark was in many respects the first American jurist in high place to enthrone his personal sense of right and wrong as a judicial standard less fallible than centuries of "freedom slowly broadening down from precedent to precedent." "The public welfare is the supreme law", he was wont to say, from the bench; that "the sob of the child in its helplessness 'curses deeper than the strong man in his wrath' ", was a characteristic sentence which was chart and compass for one of his most important opinions. Here was no "rabble-rouser" but a kindly and hard-working jurist, proud of his Court, its function and fame, and its place in his beloved state; yet when some future analyst sets out to trace what has befallen law, precedent, and constitutional doctrines of delegated and limited powers, in America, this biography will be found to tell trenchantly the tale of a trail-blazer in the sweeping away of landmarks and moorings. The chronicle shows no trace that the coiner of the phrase "five elderly judges", later to be paraphrased as "nine old men", ever foresaw that judicial decisions poised somewhere between discretion and impulse, however humanitarian and "liberal" they appear at the moment to be, lead inevitably to an absolutism of "personal government" against which even the same instincts of his flaming spirit would have revolted.

Recent Publications

PHILADELPHIA LAWYER, by George Wharton Pepper. 1944. Philadelphia: J. B. Lippincott Co. $3.75.

AN AMERICAN PROGRAM, By Wendell L. Willkie. 1944. New York: Simon and Schuster. 25c — Bound in Cloth, $1.

WHAT IS THE VERDICT? by Fred L. Gross. 1944. New York: The Macmillan Co. $2.50.

INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS, by Samuel B. Horovitz. 1944. Boston: Wright & Potter Printing Co.

THE AMERICAN CHARACTER, by D. W. Brogan. 1944. New York: Alfred A. Knopf. $2.50.

THE MARITIME INDUSTRY, Federal Regulation in Establishing Labor and Safety Standards, by Rudolph Walter Wissman. 1944. New York: Cornell Maritime Press. $5.

MENTOR GRAHAM, by Kunigunde Duncan and D. F. Nickols. 1944. Chicago: The University of Chicago Press. $2.50.

Lew Wallace
A Study of a Versatile Life

George R. Farnum
OF BOSTON
FORMER ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES

This is the twenty-fourth in a series of biographical studies of eminent soldier-lawyers written by Mr. Farnum for the JOURNAL.

In the days when he came to write his autobiography, Lewis Wallace, or Lew as he was called, declared, "Life itself has been, on the whole, so happy, comfortable, and fortunate, that the world, meaning society and my fellow men, seems an esteemed associate in a long journey." His allotted span of seventy-eight years was packed with zestful living, and a wide and engrossing diversity of experience.

His were folk, he said, "who cared little for ancestry." His paternal grandfather, Andrew Wallace, emigrated from Pennsylvania to Cincinnati, "when," as he put it, "that city was a village in loose assemblage under the guns of a fort." "Who his progenitors were, and whence they came, are now," he added, "beyond my ascertainment," and there he was content to leave the matter. Andrew, "who never overtook a fortune," moved to Brookville, Indiana, with his family of seven sons and one daughter, of whom Lew's father, David, was the eldest. Though educated at West Point, David adopted the legal profession, entered public life and rose to the governorship of his state. Of the formative influences to which he owed so large a measure of his intellectual and cultural distinction, the son offers this interesting commentary: "There were fewer books then, and they were of the best, and constant familiarity with them gave a stateliness of speech and a certain dignity that comes of keeping good company. They dined with Horace and supped with Plutarch, and were scholars without knowing it."

Lew Wallace was born in Brookville, on April 10, 1827. Five years later the family removed to Covington on the Wabash. His first schooling was in the institution in which so many of the leaders of our past obtained their early, and in many cases only, formal instruction—the little red school house on the hill. In 1837, with the election of his father as Governor, the family moved again, this time to Indianapolis. His introduction to the State House library was a memorable event in his life, and a landmark in his education.

There came the time, as he was to describe it many years later, when "The ego in me began its wrestle with the question, probably the most serious of life to every one not in condition to exist without labor—'What am I to do with myself?' " What more natural than he should think of following his brother's example and enter his father's office as a student of law? Thus he weighed the pros and cons—

> With what may be called the economy of the law office I have been familiar from childhood, and its routine had always appeared to me the champion horror of horrors. That, however, was but one side of the practice—its ugly side—and I shrank from it. On the other hand, often as I held the opposite at angles for study the routine vanished. Appearances in court, for instance, with their accessories—judge, jury, the public, and the Commonwealth behind them—was there an occupation so fascinating to a soul confident in itself to the superlative of vanity? Then, dropping the mere personal consideration, was there a progressive movement in organized society or a useful scheme involving co-operative energy, from a town ordinance to a continental railway, that had not its fashioning and finish from a lawyer? And as the stepping-stones in politics, well, ideas of the sort caught me.

The final decision was for the law.

Under his father's "methodical instruction" he soon qualified to practice before justices of the peace —pettifogging it was called—where his work, as he described it, "was of the misdemeanor class of criminal law, and now and then a civil cause with bad feeling between the parties for motives." At times he "confronted old lawyers whose very justifiable contempt for my presumption I offset with an audacity they did not always know how to meet."

He soon found himself acquiring a local renown and, as he added, "actually making money." Thus progressing in his limited role and doing some interstitial literary work, he began to acquire, as he said, "the ease of mind which is a first cousin of contentment." Suddenly, however, the Mexican crisis and General Taylor's departure from New Orleans diverted his attention from the law. Taylor's unaggressive early

movements soon dispelled his "faith in a belligerent outcome" and he turned back to the law. As he lacked the requisite license for practice in the more dignified and substantial role of "a recognized lawyer" he set himself to prepare for the necessary examination. The increasing military tempo of the Mexican situation, however, set him on fire and, as he confessed, "The weeks which should have been devoted, day and night, to persistent review had been taken up with Scott's Infantry Tactics. The precious contents of law books," he added, "when I tried to look back on them, refused to rise to call." And thus he summed up his tragic state, "What I really knew had become gelatinous pulp in the cells of my brain." To his examination paper he appended a flippant note to the examining judge expressing the hope that "the foregoing answers will be more to your satisfaction than they are to mine," concluding, "whether they are or not, I shall go to Mexico." In lieu of the license he received the curt reply, "The Court interposes no objection to your going to Mexico."

As the tempo of hostilities rose, Wallace decided to act on his own. Hiring a room on the main street, he hung out a flag, and a transparency inscribed with the motto, "For Mexico, Fall In," and, with the added appeal of a drum and fife, started to recruit a company. In three days it was full. He was elected second lieutenant. The company was accepted by the Governor and ordered to a point of rendezvous where they were mustered into the national service. Off they went to the seat of war, but Wallace's services in the field included little or no real fighting.

On his return to Indianapolis he re-entered his father's office with the determination to obtain the status of a fully licensed practitioner which had been denied him the year before. After the examination he again received a note from the same examining judge. On this occasion it read, "Permit me to congratulate you upon your safe return from Mexico," and this time it was accompanied by the coveted license. Instead of remaining in Indianapolis he returned to the village of Covington, his childhood home, opened an office, and faced the future with a capital of one paper dollar and seventy-five cents. The day he hung out his shingle the bank which issued the note failed! Of the character of those among whom he must seek a clientele, he said, "Speaking generally, the people of the county were the original settlers, primitive in habits, large-hearted, western in spirit. Instead of taking their quarrels into court, they settled them on the spot, resorting to their fists."

In 1850 Wallace was elected prosecuting attorney and was re-elected two years later. Politics being, as he declared, "always in order with fledglings at the Bar," he "plunged into it with the assiduity of an apprentice just out of bond." In the sequel he won a seat in the State Senate. He advocated certain reforms in the divorce laws and demonstrated a certain prescience of things to come by proposing the popular election of United States Senators. In 1853 he removed to Crawfordville. Here he organized a military company, a large portion of the members of which served as officers in the Civil War.

On the late afternoon of April 13, 1861, while he was addressing a jury, Wallace was interrupted by the arrival of a telegram from Governor Morton. It read, "Sumter has been fired on. Come immediately." Wallace turned the case over to his partner, left the court room, and started post haste for Indianapolis. He came away from his interview with the Governor with the appointment of adjutant general and a commission to raise six regiments forthwith. In five days Wallace could report that enough companies were recruited to constitute twice the number of regiments proposed. Though the Governor desired his new adjutant to remain at his post, he gave in to Wallace's entreaties to be given a command in the field. So Wallace became colonel of the Eleventh Indiana Zouaves. If not a brilliant leader, he served throughout the war with ability. Though a stickler for discipline he was popular with his men and was raised by successive promotions to the rank of brigadier general.

About 1875, when Wallace "was getting over the restlessness due to years of service in the War of the Rebellion," it occurred to him, as he said, "to write the conception which I had long carried in my mind of the Wise Men." The result was his celebrated book, *Ben Hur: A Tale of the Christ*. Some years later he wrote, "I have tried many things in the course of the drama [his life] —the law, soldiering, politics, authorship, and lastly, diplomacy—and if I may pass judgment upon the success achieved in each, it seems now that when I sit down finally in the old man's gown and slippers, helping the cat to keep the fireplace warm, I shall look back upon *Ben Hur* as my best performance."

Five years elapsed between the time that he applied himself to the composition of his masterpiece until it appeared. He toiled unremittingly at the task which involved an immense amount of historical, geographical and ethnological research. The work was prosecuted at his home, in his law office, at odd moments in court houses, at hotels and on railroads—in fact, wherever and whenever the opportunity presented itself. Of the hours spent under an old beech tree in Crawfordsville he reminesced, "How often, when its thick branches have protected me with their cooling shadows, has it been the only witness to my struggles; and how often, too, has it maintained great dignity when it might have laughed at my discomfiture. The soft twittering of birds, the hum of bees, the lowing of the kine, all made this spot dear to me." The book was finished amid the irksome discomforts in a "gloomy den" of a fort at Santa Fé where he was ensconced at the time as Territorial

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House of Delegates
THIRD SESSION

The question as to how far the Association should go at this time, in recommending details of international judicial organization in addition to the World Court. A plan drafted by the Section of International Law was approved. Resolutions from the Section of Patent Law, the Section of Taxation, and the Section of Corporation, Banking and Mercantile Law, were adopted. The recommendations of the Section of Insurance Law, dealing with the recent decision of the Supreme Court as to federal jurisdiction over the insurance business, was adopted, after several items had been stricken out on a point of order. The Committee on Labor, Employment and Social Security offered a comprehensive statement of principles to be embodied in legislation against strikes interfering with war production. The recommendations and program of the Section of Legal Education was the concluding feature of a hard-working and significant session, during which the House gave deliberative consideration and used independent judgment as to all matters.

The first order of business voted by the House for its third session, held Wednesday afternoon, September 13, was the consideration of resolutions submitted by Chairman Mitchell B. Carroll for the Section of International Law, as follows:

WHEREAS, The effective administration of international justice is an indispensable element in the maintenance of peace; and

WHEREAS, There have not been readily accessible permanent international courts for the adjudication of all justiciable disputes among nations; and

WHEREAS, The history of the development of judicial tribunals in various nations demonstrates the advantage of circuit courts and the service by members of the highest tribunals on circuit courts:

NOW THEREFORE BE IT RESOLVED:

I. That the Permanent Court of International Justice, organized in 1922 at The Hague and known as the World Court, should be continued as the highest tribunal of an accessible system of interrelated permanent international courts with obligatory jurisdictions.

II. That the World Court be so organized that a member shall be available to sit as an International Circuit Court, with original jurisdiction, to hold regular terms in the capital of each member nation of the International Judicial System. In addition to the World Court Justice on circuit, each such circuit court shall include one or more International Commissioners assigned to sit in an advisory capacity.

III. That an International Judicial Conference composed of jurists should be convened at the earliest practicable moment with a view to concluding an "International Judiciary Agreement" based on the Statute of the World Court, with such amendments as may be necessary to give effect to the foregoing resolutions and to provide for the prompt organization and maintenance of the "International Judicial System."

Reports as to the Resolutions

The House Committee to consider the resolutions reported, through W. E. Stanley, of Kansas, that it submitted them "without comment". Chairman William L. Ransom, of the Association's Committee on Post-War Organization, said that the Committee had been "unanimously opposed" to the resolutions of the Section in the form in which they were first distributed to the House. At that time Paragraph II of the resolutions then read:

II. That a permanent International Circuit Court should be established in the capital of each member nation of the International Judicial System, with jurisdiction over cases against the government in whose capital such Court sits. Each circuit court should consist of one member of the World Court on Circuit and one or more International Commissioners assigned to sit with the Court in an advisory capacity.

As to the resolutions in their original form, the Special Committee's report had recommended to the House:

"That the detailed plan for a post-war 'international judicial system', with international circuit courts in the capital of each member state, an 'international judicial conference', etc., all as prepared and submitted to your Committee by the Coordinating Committee on Post-War Judicial Organization in the Section of International and Comparative Law, be not adopted by the House at this time if the plan is submitted to the House by the Section, but that the details of the desirable international judicial organization be reserved for further study, report and action."

The Committee's opposition to the original form was, as explained by Judge Ransom, "in part because of the size and complexity of the machinery which the proposed resolutions and recommendations would create, and in part because of the fact that the report of the Judicial Committee to the Dumbarton Oaks Conference had not then, and still has not, been presented.

"The six of the seven members of your Committee who are in Chicago have conferred from time to time with members of the Section Council and its Coordinating Committee. The result is a clarification and simplification, I believe, of the Section's original proposal, so that it more clearly states what was intended.

A Proposal Worthy of Consideration

"Your Committee has not had opportunity since this draft was perfected yesterday afternoon to meet and formulate a definitive report to place before you," continued Chairman

Ransom. "I think I am warranted in saying that your Committee is unanimously of the opinion that the Section's recommendation is a considered plan, one of the most comprehensive and carefully worked-out that has been placed before us, and that it is well worthy of consideration by those who are endeavoring to formulate and implement the judiciary angle of the international organization, that being the angle with which we as lawyers are most concerned.

"I think a majority of the Committee is of the opinion that the draft as it stands may well be submitted as a considered proposal in that field, perhaps without committing ourselves as a final matter to this as our definitive judgment in the light of what may later be recommended by the Dumbarton Oaks Conference."

Judge Phillips Offers Angles for Consideration

Chairman Ransom asked that Judge Orie L. Phillips, of the sub-committee which worked with the Section, make a statement for the Committee. "There can be no doubt," declared Judge Phillips, "that this Section has earnestly and carefully and perhaps skillfully worked out a detailed judicial setup for a world organization. There may be some danger in too much detail. We may find ourselves suggesting a plan that is diametrically opposed to, and possibly all out of line with, what may come out of the Conference now being held at Dumbarton Oaks.

"There are three things that perhaps we should think seriously about: One is that this suggested plan goes a very long way with respect to a Circuit Court setup in which a sovereign nation may be sued in substance by a national of another nation. Surely the venue of the jurisdiction is in the nation of the one that is sued or complained against. It may be that when we have come to a deliberate and final study and consideration of the matter that that will be found to be a desirable, and possibly a necessary, part of the judicial set-up, but it is a far-reaching thing and is a departure from what has heretofore been thought necessary.

"I am inclined to think it is probably a departure from what will be suggested at Dumbarton Oaks. Moreover, there is at present a plan for the selection of judges, and this goes forward with a new scheme for the purpose of nominating and selecting the judges. Further, this contemplates a compulsory jurisdiction which is a serious problem. To what extent we may now go in stating and determining and granting a compulsory jurisdiction is a serious and important problem."

Proposals Should Be Further Studied

"My suggestion is that it would probably be better to treat these studies and these proposals as worthy contributions to the thinking on these problems, and that they be received for the purpose of further study and consideration. In matters of such grave importance, matters upon which we might not eventually hope to obtain the concerted agreement of the nations of the world, it might be better for us to treat them as carefully thought-out and worked-out proposals to be further studied and considered.

"I think, gentlemen of the House, it would perhaps be better that we do not commit ourselves definitely and irretrievably by definitive action on these proposals.

"I think our Committee is under some obligation. I think perhaps we have ourselves committed ourselves to the Section to go along with it. We want to go along with these proposals, but I think we ought to go along cautiously and carefully, and, to use the vernacular of my country, not get ourselves out on a limb."

The Section Urges Action

Bruce W. Sanborn, of Minnesota, moved that the resolutions be referred to the special Committee for its consideration and report. Chairman Carroll of the Section urged that "the time for action is now".

When Chairman Ransom of the special Committee arose to offer a substitute motion, Chairman Crump asked him to speak first as to the propriety of referring to a Committee a resolution which had been reported by a Section. "Having been neither a chairman of the House nor a chairman of the Rules and Calendar Committee," replied Judge Ransom, " I would not presume to advise you upon it. My personal judgment is that any matter may at any time be referred by the House to any agency of the House or the Association as it sees fit."

Chairman Crump ruled that Mr. Sanborn's motion was in order, and the chairman of the special Committee offered the following substitute for it:

> That the House authorize the release and circulation of these resolutions and the accompanying report; that the House authorize their transmittal to any public authorities or organizations or individuals who are studying the subject; that we do so on the ground that we believe them to be a considered and comprehensive contribution to the matter of postwar international organization of the judiciary, and that we do so without commitment at this time to the details of this particular plan as compared with proposals which may emanate from the Dumbarton Oaks Conference.

William C. Mason, of Pennsylvania, seconded the substitute, and Mr. Sanborn withdrew his motion in favor of the substitute. As to his motion, Chairman Ransom declared his belief that "it would be a much fairer and a more useful thing to do, and a much greater measure of justice to a Section whose Committee has proposed something which is really creditable and of which we have no reason to feel anything but proud. Yet we may recognize that is is too early before the Judicial Committee of the Conference has reported, to tie ourselves to all the details of this particular plan."

Charles M. Hay Favors Action

State Delegate Charles M. Hay, of Missouri, a member of both the Special Committee and the Section's Council, favored the immediate passage of the Section's resolutions. "In the form in which the Section sub-

mitted their resolutions originally," he said, "our Committee was unanimously opposed to them, as Judge Ransom has suggested.

"After the revision was put into its present form, I expressed myself as in favor of the adoption of the amended form, and that is my position at the present time.

"It may be that the Dumbarton Oaks Conference will come forward with a somewhat different program. The fact that we have committed ourselves to this definite program I do not suppose would furnish any great difficulty to a revision of judgment in favor of a Dumbarton Oaks Plan if that, in our judgment, is the wise thing to do.

"Furthermore, I do not assume that our definite commitment to this program will overwhelm the Dumbarton Oaks Conference and lead to the adoption of something that in their judgment is not wise." (Laughter)

James O. Murdock Explains the Resolutions

James O. Murdock, of the District of Columbia, chairman of the Section's Coordinating Committee on Post-War Judicial Organization, which drew the original resolutions, was accorded the privileges of the floor, on the request of Chairman Carroll of the Section. Mr. Murdock referred first to the agreement with the Special Committee on the revised wording. "We are grateful to the Committee of seven," he said, "for helping us to clarify the resolutions to state exactly what we intended to mean in the first place."

Mr. Murdock urged that the House act at once. "On this sort of thing, if the lawyers do not provide the leadership and some ideas," he said, "other groups will. The Section has worked hard on this subject for two years."

John Kirkland Clark, of New York, asked if the Section's resolutions implied "obligatory jurisdiction" for the Permanent Court of International Justice. Mr. Murdock read from the resolutions, and answered that "The World Court has had an obligatory jurisdiction for a number of years. The United States in many cases has given obligatory jurisdiction to purely temporary ad hoc tribunals that were devised overnight. If we are hopeful at all of a regime of law as distinguished from a regime of force and policy hammered out in the cloakrooms of Foreign Offices, if we think at all in terms of an enforced peace, it must be a just peace."

Further Questions Are Asked

Robert F. Maguire, of Oregon, asked: "Am I right in understanding that the obligatory provisions of your recommendation relate to justiciable matters as distinguished from political matters?" Mr. Murdock replied that "They relate solely to justiciable matters. We only have in mind obligatory jurisdiction of justiciable disputes. No domestic question, no purely national question, could by any stretch of the imagination be brought appropriately before such a tribunal."

As to Paragraph II of the Resolutions, Ex-Judge Floyd E. Thompson, of Illinois, asked: "Does this Circuit Court consist of one judge, and is that court to have obligatory jurisdiction, and is its judgment to be final?" Mr. Murdock answered: "No".

"The circuit court," he said, "would consist of one judge of the World Court traveling on circuit to hold a special term in a particular country. In our report we have suggested that these circuit courts have only a quite limited jurisdiction over that minor type of case which is, however, the most numerous in character, where a government presents a claim in behalf of one of its nationals. But even in that type of case we have deferred to the judgment of the Committee of seven, in more constitutional terms. In any case, although of minor character, decided by these circuit courts, the World Court judge on circuit would be subject to appeal to the World Court in The Hague."

George M. Morris Urges the Resolutions

George Maurice Morris, of the District of Columbia, a member of the Council of the Section, argued for the passage of its resolutions. "This meets the feeling of a great many people in this House," he said, "that it is time that the Association step further than it has yet gone.

"If there is anything about which lawyers are qualified to speak through their training, their education and their experience, it is with respect to a judiciary system. The subject-matter in this report is directly within our province, and I make bold enough to say that while we may not be all as well-informed as individuals not among us may be, we all know the point made by this kind of proposal, which is simply this: That members of the International Court should be made available for use in circuit hearings.

"It does not contemplate a rigid or a necessary prescribed system of circuit courts anywhere. It provides that when the business is there and a matter requires hearing which is within the jurisdiction of the hereafter-to-be prescribed jurisdiction, then a member of the International Court may sit on circuit to hear that kind of case within that jurisdiction.

"The Committee and the Section have been very restrained, it seems to me, in abstaining from any attempt to prescribe the jurisdiction of the circuit courts; but it is well known that there are many matters, thousands of them which could be handled in courts of this character which would not require, or need not necessarily require, the action of the ultimate international court.

"This proposal of the Section is a thrust in the direction of making the international court system more readily accessible to litigants within a jurisdiction which, as we voted yesterday, must have the approval of the United States before that jurisdiction can be established. No legislation, if our resolutions are put into effect, can be effected by the international system unless that legislation has the approval of the United States. The jurisdiction of the circuit courts would fall directly within that category.

"This is a proposal which, it seems to me, of all the proposals, should receive the endorsement of the lawyers, because the essence of this proposal is to make judicial procedures readily accessible, easily arrived at, and a march in the direction of what every speaker we have heard at this meeting has said; namely, that the greatest medium for avoiding international war is a judicial process in which disagreements may be settled before they become of proportion requiring warlike measures."

Mr. Hall of Louisiana Supports Action Now

Chairman Crump called on Judge Ransom to close the debate on his substitute motion. "I think the matter has been covered," he replied.

State Delegate Pike Hall, of Louisiana, came to the dais to make a further statement in favor of the resolutions. "I want to approach this subject from the standpoint of the man at the crossroads, the country lawyer, if you will," he said, "and to bring before this body the thought which I remember was imbued in my mind and impressed by that great teacher, John Bassett Moore, at whose feet I had the pleasure of sitting during my time at Columbia, when he said that if the people of the country would realize that international law is not a mysticism, is not something that is beyond the mentality and the scope of ordinary understanding, the greatest thing would be accomplished in bringing to that thought and to that effort the mind of the lawyer and, yea, the layman throughout the world.

"I think that one of the things that has held back the progress in international law has been the reticence of those who are willing to tackle any national problem to approach upon the forbidden field of international law. It is not a mysticism; it is not something that is beyond the range of thought of the average man and, yea, the average practitioner, and the median of the Bar of these United States.

"Assembled in this House of Delegates we credit ourselves with being not just the average lawyer but the selected lawyer, from the various states in the Union, to come here and speak for the organized Bar. We have approached this problem slowly. We have approached this subject studiously. We have had two committees that have worked separately and have gotten together in their final pronouncements. Yet we stand hesitant to do anything except to state truisms.

"I am very proud that I was a member of this House when we in effect backed up the Fulbright Resolution. That was a noble step. That was a step that had its effect in this nation and will probably have its effect throughout the history of this world. But at that time there were many who felt that it was forbidden ground for even the average lawyer to step upon. However, that served its purpose. Both Houses of Congress have followed the thought that was expressed here.

Not Our Last Thought or Action on the Matter

"Now we are called upon here to go farther, and when we make this statement, if we do make it as proposed by the Committee, it may not be the last thought—I hope it won't be. It may not be the last opportunity that this House will have to make helpful suggestions, and I hope it won't be. But I have a confidence in this Committee and in this House which leads me to feel perfectly satisfied that we are capable of making a pronouncement that has something that really works in the details and answers the argument and the question that is asked you every day in your office and on the street: How can such a program be worked out? It is all right to talk about truisms. We all believe in some such organization, but how can you do it?

American Judicial System as a Precedent

"This is the opportunity for American lawyers, the organized Bar of the country, to point one way in which we believe that it can be done. I like, too, the simplicity of this plan. I am glad that this Committee has come back for precedent to the elementary establishment of the judicial system of this country rather than to the administration of justice today, as we know it, largely through administrative agencies and mere court orders.

"I like the thought of the 'circuit rider', when we are only sixty hours apart from any portion of the world, that a representative of the Court can come into the nation that has its minor international problem and sit there as a representative of the circuit and build up jurisprudence that something may be tied onto.

"The simplicity of this plan is not beyond your comprehension. This subject is not beyond your realm of thinking. I have no pretense of being an international lawyer; but I do not hesitate to have a thought and to express it on this subject, because, after all, it is the fundamentals that we are driving at and which this report has given to us. If we adopt it, it will give to this nation and to the world an expression of the organized Bar of this nation that this thing can be done. So many have said: 'It sounds fine, but how can you do it?' We are stating a way in which the most fundamental phase of it can be done; namely, a method and manner of operation of the Court which will be the center and hub and basis for the foundation of what we hope will be a lasting peace."

Chairman Carroll of the Section spoke further in support of its resolutions. "We feel that the people of this country, and perhaps even the people at Dumbarton Oaks," he said, "are looking for an expression from this group as to some form of international judicial organization which will help obviate the causes of war and contribute to the maintenance of peace. We therefore urge you most heartily, most fervently, to be audacious. There is nothing in this that will stultify you. On the other hand, I think that many people will point with credit to this organization if you adopt these proposals."

A vote was then taken on the mo-

tion for a qualified approval and recommendation of the Section's plan for an "international judicial system". This was defeated.

The House then adopted the Section's resolutions, by a substantial vote, without a division.

Chairman Carroll then sought to offer another resolution from the Section, in behalf of organizing co-operation among units of the organized Bar throughout the world. Chairman Crump ruled that inasmuch as this resolution had not been submitted to the Committee which the House had constituted to consider it, action could not be had at that time.

Mr. Hay's Resolution Is Reported Favorably

State Delegate William W. Evans, of New Jersey, as chairman of the House Committee, reported favorably and moved the resolution which had been offered at the first session by Charles M. Hay, Deputy Chairman and Executive Director of the War Manpower Commission. In its revised form, the resolution was as follows:

RESOLVED, by the House of Delegates of the American Bar Association, that we review with great pride and gratification the record achieved by American industry—both management and labor—in the production of war goods.

While noting the achievements thus far, we are deeply conscious that the war is not yet over and that, in fact, bloody struggles and bitter sacrifices are still ahead of us. The military authorities have announced that while there is an abundance of the great majority of the items of munitions and supplies, there is a critical shortage of a substantial number of vital items such as heavy truck tires, Radar and heavy munitions.

We can afford to take no chances. There must be no letdown in any necessary war activities till the last shot is fired.

BE IT RESOLVED, therefore, that we rededicate ourselves to continued and unremitting effort; and

BE IT FURTHER RESOLVED, that we pledge ourselves to use all of our influence in our respective communities and, wherever opportunities may be afforded, to accomplish the full manning of all essential war plants; and the continued and uninterrupted production of all supplies which may, under any circumstances, be needed for our armed forces.

Mr. Hay Asks Lawyers to Help

State Delegate Hay was recognized. "I wish to say just a word, Mr. Chairman," he began, "in explanation of my offering of this, which I sincerely believe is a non-controversial matter. Perhaps I ought to apologize to this House for offering anything non-controversial (laughter); but I would, since this may be the last time that I will meet in this House as a member of it, like to have the record of once appearing on a matter not a subject of controversy. I have enjoyed no little my service in this House.

"To each of you I want to say in all earnestness: We are confronted at the present time with extreme difficulty in manning the war industries that are now critically short of end products. We heard a moving story from General Somervell and General Clay as to the shortages of certain vital products. They may not prove to be menacing if the war in Europe should end within thirty days; they could easily become menacing if the war there should be prolonged beyond our present expectation. But the urge, at the present time, of workers to get into some activity that promises employment after the war is so great that we are having tremendous difficulty in holding men in certain of these war plants and in recruiting for them.

"I rise simply to add this word to the resolution: To appeal to you gentlemen, in your communities and wherever you have influence, to lend all of the sentiment that you can in favor of the manning of these war industries until the conflict is over. We need your help, and I want to thank you in advance for any assistance that you can give us in that direction." (Applause)

The resolution was put to a vote and was carried without opposition.

Report by the Section of Patent Law

The next order of business was the recommendations of the Section of Patent, Trade-Mark and Copyright Law, given by John Dashiell Myers, of Pennsylvania, as chairman. Roy E. Willy, of South Dakota, for the House Committee, advised favorable action on the Section's proposals, with some minor changes in verbiage agreed on between the Section and the Committee.

The following resolutions from the Section, presented by Chairman Myers with the aid of his mimeographed report and copies of the bills, were followed closely by members of the House, were put to a vote and adopted by the House, without opposition:

Resolution No. 1

RESOLVED, That H. R. 4641, providing renewal rights for future as well as previously subsisting copyrights in commercial prints and labels, on the same basis as provided for copyrights generally by sections 23 and 61 of the Copyright Law of 1909, as amended (Title 17, U.S.C.), be approved in principle, and that H.R. 4641 be approved specifically if the inadvertent reference to section 24 of said Copyright Law of 1909, as amended, be deleted therefrom.

Resolution No. 2

RESOLVED, That H.R. 4408 be approved in principle in so far as its purpose is to codify into absolute law Title 17 of the United States Code entitled "Copyrights," and disapproved specifically insofar as it seeks to rearrange and renumber the present sections of such law.

Resolution No. 3

RESOLVED, That the Act of October 6, 1917, c. 95, 40 Stat. 394 (as amended July 1, 1940, c. 501, sec. 1, 54 Stat. 710 and June 16, 1942, c. 415, 56 Stat. 370) be supplemented by an act, modeled after the Act of October 31, 1942, c. 634, sec. 6, 56 Stat. 1014 (35 U. S. Code 94), providing that

"For the purposes of the Act of October 6, 1917, c. 95, 40 Stat. 394, as amended by the Acts of July 1, 1940, c. 501, sec. 1, 54 Stat. 710 and June 16, 1942, c. 415, 56 Stat. 370 (35 U. S. Code, sec. 42) the manufacture, use, sale or other disposition of an invention by a contractor, a sub-contractor or any person, firm or corporation for the government and with the authorization or consent of the government shall be construed as use of the invention by the government."

Resolution No. 4

Was withdrawn by the Section as an Association resolution already adopted is sufficient for the purposes.

Resolution No. 5

RESOLVED, That the Association disapproves in principle of H.R. 3762.

Resolution No. 6

RESOLVED, That the Association disapproves the principles of S. 2046, insofar as they relate to patents and rights thereunder, and does not thereby imply approval of the other provisions of the bill.

Resolution No. 7

RESOLVED, That the Association disapproves the principle of X. 1913 and H.R. 4801 insofar as they relate to inventions, discoveries, processes, trade-marks and patents, and does not thereby imply approval of the other provisions of the bill.

Resolution No. 8

RESOLVED, That H.R. 5236 be disapproved.

Resolution No. 9

RESOLVED, That H.R. 4493 be disapproved both in form and principle.

Resolution No. 10

RESOLVED, That the Association recommends to the Court of Claims that the Court amend its rules:

1. To insure that testimony before the Commissioner be taken, as nearly as possible, as if on trial in a federal district court in that plaintiff's testimony, defendant's testimony and plaintiff's rebuttal proceed, without extended adjournment, from day to day until completed.

2. To minimize delay in interlocutory matters.

Section of Taxation Reports

The recommendations of the Section of Taxation were the next item on the day's calendar and were presented by Chairman Weston Vernon, of New York. Kenneth Teasdale, of Missouri, for the House Committee to consider this report, stated that "we have come to a conclusion that the provisions thereof are efforts to remedy incongruities, inconsistencies, ambiguities, and to supply omissions which create either doubt, discrimination or uncertainty. We consider all the provisions eminently proper for the consideration of the House."

The following resolutions from the Section were offered and succinctly explained by Chairman Vernon, and were adopted by the vote of the House, without opposition:

1. *Tax Court Jurisdiction of Manufacturers' Excise Taxes*

RESOLVED, That the American Bar Association recommends to the Congress that jurisdiction over manufacturers' excise taxes be conferred upon the Tax Court of the United States; and

FURTHER RESOLVED, That the Association propose that this result be achieved by amending subchapter C of chapter 29 of the Internal Revenue Code by the addition of three new sections defining a deficiency, setting forth the procedure in general, and providing for jeopardy assessments; and that the officers and council of the Section of Taxation be directed to urge the following proposed amendment, or its equivalent in purpose and effect, upon the various committees of the Congress:

Subchapter C of chapter 29 is amended by inserting after section 3453 the following new sections:

Sec. 3454. Definition of Deficiency. As used in this chapter in respect of the tax imposed by this chapter the term "deficiency" means—

(1) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amount previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the taxpayer upon his return or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

Sec. 3455. Procedure in General.

(a) (1) Petition to Tax Court.—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Tax Court of the United States for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period nor, if a petition has been filed with the tax court, until the decision of the tax court has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. If the notice is addressed to a person outside the states of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days.

(b) Collection of Deficiency Found by Tax Court.—If the taxpayer files a petition with the tax court, the entire amount redetermined as the deficiency the decision of the tax court which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the tax court which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) Failure to File Petition. If the taxpayer does not file a petition with the tax court within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) Waiver of Restrictions. The taxpayer shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) Increase of Deficiency After Notice Mailed. The tax court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any penalty, additional amount or addition to the tax should be assessed—if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) Further Deficiency Letters Restricted. If the Commissioner has

mailed to the taxpayer notice of a deficiency as provided in subsection (a) of this section, and the taxpayer files a petition with the tax court within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect to the same taxable year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the tax court, or in section 3456, relating to the making of jeopardy assessments. If the taxpayer is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax is excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of section 3443 (f),[1] prohibiting credits or refunds after petition to the Tax Court of the United States) as a notice of a deficiency, and the taxpayer shall have no right to file a petition with the tax court based on such notice, nor shall assessment or collection be prohibited by the provisions of subsection (a) of this section.

(g) Jurisdiction Over Other Taxable Periods.—The tax court in redetermining a deficiency in respect of any taxable period shall consider such facts with relation to the taxes for other taxable periods as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable period has been overpaid or underpaid.

(h) Final Decisions of Tax Court. For the purposes of this chapter the date on which a decision of the tax court becomes final shall be determined according to the provisions of section 1140.

(i) Extension of Time for Payment of Deficiencies. Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the taxpayer, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary, may grant an extension for the payment of such deficiency for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(j) Address for Notice of Deficiency. In the absence of notice to the Commissioner under section —[2] of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

Section 3456. Jeopardy Assessments. The provisions of section 273 shall be applicable to the taxes imposed by this chapter.

2. *Manufacturers' Excise Taxes—Sales Price*

RESOLVED, That the American Bar Association recommends to the Congress that section 3441 of the Internal Revenue Code be amended by adding three new subsections (e), (f) and (g), to the end that, as a result of said amendments, section 3441 of the code may be clarified so as to require, in accordance with the legislative intent expressed in the Ways and Means Committee Report on the Revenue Bill of 1932, that the tax be "imposed and administered uniformly and without discrimination," and that "each member of competitive group shall pay upon substantially the same basis as all his competitors even though his sales methods may differ"; and that the officers and council of the Section of Taxation be directed to urge the following proposed amendments, or their equivalent in purpose and effect upon the various committees of the Congress:

Section 3441 (relating to sale price) is amended by inserting after subsection (d) the following:

(e) In the case of a sale by a manufacturer to a selling corporation of an article to which the tax under this section applies, the transaction shall be prima facie presumed to be otherwise than at arm's length if either the manufacturer or the selling corporation owns more than 75 per centum of the outstanding stock of the other, or if more than 75 per centum of the outstanding stock of both corporations is owned by the same persons in substantially the same proportions. Sales by a manufacturer to a selling corporation shall in all other cases be prima facie presumed to be at arm's length.

(f) If an article, to which the tax under this chapter applies, is sold by the manufacturer thereof otherwise than through an arm's length transaction, at less than the fair market price, to a selling or distributing agency controlled by such manufacturer, the tax shall be imposed on the same value as in the case of similar sales between independent parties.

(g) If an article to which the tax under this chapter applies is sold by the manufacturer thereof acting as his own distributor, the salesmen's commissions and costs and expenses of advertising and selling which are attributable to the functions of distribution and sale, as distinguished from the function of manufacturing, shall be excluded in determining the sale price for the purposes of this chapter.

3. *Estate & Gift Taxes—Limitation Period for Transferees*

RESOLVED, That the American Bar Association recommends to the Congress that the Internal Revenue Code be amended so that the period of limitation for the assessment of Gift Tax against a transferee or fiduciary shall, except in the case of insolvency of the donor, be the same as the period of limitation for assessment against the donor and the period of limitation for assessment of Estate Tax against transferees and others in like situations be the same as the period of limitation for the assessment of such tax against the estate.

FURTHER RESOLVED, That the Association proposes that this result be achieved by amending Sections 1025 (b) and 900 (b) of the Internal Revenue Code and

FURTHER RESOLVED, That the Section of Taxation is directed to urge the following proposed amendments, or their equivalent in purpose and effect, upon the proper committees of the Congress:

(1) That Section 1025 (b) (1) of

1. Amend sec. 3443 by adding new subdivision (f); following phraseology of 322 (c).

2. Add new section comparable to sec. 312 and 901 and 1026.

the Internal Revenue Code be amended to read as follows:

(1) The same as the period of limitation for assessment prescribed in Sections 1016 and 1017 of the Internal Revenue Code except that in any case where the transfer of the property by gift by the donor rendered the donor insolvent including the amount of the gift tax upon such transfer as a liability of the donor, the period of limitation for assessment shall be within one year after the expiration of the period of limitation of assessment against the donor.

(2) That Section 900 (b) (1) of the Internal Revenue Code be amended to read as follows:

(1) The same as the period of limitation for assessment prescribed in Sections 874 and 875 of the Internal Revenue Code except that if the estate is insolvent including the amount of the Estate Tax as a liability of the estate, the period of limitation shall be within one year after the expiration of the period of limitation for assessment against the executor.

4. *Estate & Gift Taxes—Liens*

RESOLVED, That the American Bar Association recommends to the Congress that the Internal Revenue Code be amended so that the liens imposed by the Estate and Gift Tax Provisions be subject as against purchasers for value and others in like situations to the same provisions as the liens for income tax in order that such purchasers and others may not find themselves paying for property subject to liens of which they have no knowledge.

FURTHER RESOLVED, That the Association proposes that this result be achieved by amending Sections 827 and 1009 of the Internal Revenue Code.

FURTHER RESOLVED, That the Section of Taxation is directed to urge the following amendments, or their equivalent in purpose and effect, upon the proper committees of the Congress:

1. That Section 827 (b) of the Internal Revenue Code be amended to read as follows:

(b) *Liability of Transferee, Etc.*— If the tax herein imposed is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, non-exercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 811 (b), (c), (d), (e), (f), or (g), to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property mortgaged, pledged or sold by such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, non-exercise or release of a power of appointment, or beneficiary, to a mortgagee, pledgee, or bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien provided in Section 827 (a), and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, except any part mortgaged, pledged, or sold to a mortgagee, pledgee, or bona fide purchaser for an adequate and full consideration in money or money's worth.

2. That Section 827 of the Internal Revenue Code be amended by adding thereto a new sub-section (c) reading as follows:

(c) The provisions of Section 3672 to 3679, inclusive, of the Internal Revenue Code shall apply to the lien imposed by this section.

3. That Section 1009 of the Internal Revenue Code be amended to read as follows:

Sec. 1009. Lien for Tax

The tax imposed by this chapter shall be a lien upon all gifts made during the calendar year, for ten years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift mortgaged, pledged, or sold by the donee to a mortgagee, pledgee or bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property) except any part mortgaged, pledged, or sold to a mortgagee, pledgee, or bona fide purchaser for an adequate and full consideration in money or money's worth. If the Commissioner is satisfied that the tax liability has been discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all of the property from the lien herein imposed.

(b) The provisions of 3672-3679, inclusive, of the Internal Revenue Code shall apply to the lien imposed by this section.

5. *Tax Court Decisions—Scope of Judicial Review*

RESOLVED, That the American Bar Association recommends to the Congress that section 1141 (c) of the Internal Revenue Code be amended to the end that in reviewing findings and determinations made by the Tax Court of the United States, the reviewing courts shall have the same powers and duties that they have in reviewing findings and decisions of the several federal district courts; and that officers and council of the Section of Taxation be directed to urge the following proposed amendment, or its equivalent, in purpose and effect, upon the proper committees of the Congress:

"Amend section 1141 (c) (1) so that when amended it will read as follows:

"POWERS.

"(1) To Affirm, Modify or Reverse. Upon such review, such courts shall have power to affirm, modify or to reverse the decisions of the Tax Court with or without remanding the case for a rehearing, to the same extent that such courts may affirm, modify or reverse upon reviewing a decision of a United States district court."

6. *Invested Capital—Transferee in Reorganization*

RESOLVED, That the American Bar Association recommends to the Congress that the Internal Revenue Code provisions be amended so that all corporations coming within the purpose of section 718 (c) (5) will have equity invested capital computed on the same basis.

FURTHER RESOLVED, That the Association proposes that this result be achieved by amending section 718 (c) (5) by adding at the end thereof, a new sentence to permit the application of the section to cases involving more than a single transferor; and

FURTHER RESOLVED, That the Section of Taxation is directed to urge the following proposed amendment, or its equivalent in purpose and effect, upon the proper committees of the Congress.

That section 718 (c) (5) be amended by adding thereto at the end thereof a new sentence as follows:

A "transferor" within the meaning of this subsection shall include one or more corporations transferring substantially all of their property to another corporation formed to acquire such property, providing

the other requirements of this subsection are met.

This amendment shall be effective as of the first taxable year beginning on or after January 1, 1940.

7. *Invested Capital—Preferred Stock Distributions in First Sixty Days of Taxable Year*

RESOLVED, That the American Bar Association recommends to the Congress that the Internal Revenue Code provisions be amended so as to eliminate presumptions as to source of distributions on preferred stock during the first 60 days of the taxable year.

FURTHER RESOLVED, That the Association proposes that this result be achieved by amending section 718 (c) (2) of the Internal Revenue Code; and

FURTHER RESOLVED, That the Section of Taxation is directed to urge the following proposed amendment, or its equivalent in purpose and effect, upon the proper committees of the Congress:

That section 718 (c) (2) be amended to read as follows (new matter italicized):

(2) Distributions in First Sixty Days of Taxable Year.—In the application of such subsections to any taxable year beginning after December 31, 1940, so much of the distributions *other than periodic distributions on preferred stock* (taken in the order of time) made during the first sixty days thereof as does not exceed the accumulated earnings and profits as of the beginning thereof (computed without regard to this paragraph) shall be considered to have been made on the last day of the preceding taxable year.

This amendment shall be effective as of the first taxable year beginning on or after January 1, 1940.

8. *Extension of Time to Qualify Pension Trusts*

RESOLVED, that the American Bar Association recommends to the Congress that the provisions of the Internal Revenue Code be amended to extend for an additional year beyond December 31, 1944, the time within which employees' pension trusts may be amended to qualify under the Code;

BE IT FURTHER RESOLVED, That the Association propose that this result be achieved by amending Section 162 (d) (1) (B) of the Revenue Act of 1942, as amended; and

BE IT FURTHER RESOLVED, That the Section of Taxation is directed to urge the following proposed amendment, or its equivalent in purpose and effect, upon the proper committees of Congress:

That Section 162 (d) of the Revenue Act of 1942, as amended, be further amended by striking subparagraph (1) (B) thereof and substituting therefor the following (new matter italicized):

(B) Such a plan shall be considered as satisfying the requirements of Section 165 (a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, *1942* and ending December 31, *1945*, if the provisions thereof satisfy such requirements by December 31, *1945* and if by that time such provisions are made effective for all purposes as of a date not later than January 1, *1946*.

Issues Arise as to Report on Labor Relations Laws

The next report was that of the Committee on Labor, Employment and Social Security, with Robert F. Maguire, of Oregon, as chairman. James L. Shepherd, Jr., of Texas, reporting for the House Committee to consider these recommendations, disclosed a difference of opinion between Frank L. Hinckley, of Rhode Island, and himself, in the House Committee, Chairman W. Logan Martin, of Alabama, being absent because of illness. Mr. Shepherd was opposed to the recommendations.

Chairman Maguire was then recognized to present the report of his Committee. "Nearly all of us have been concerned, as has everyone else," declared he, "with the actual and at all times potential danger that necessary war effort might be hampered, obstructed, or even destroyed, by reason of labor disputes and the insistence upon those who labor, in exercising what is the ordinary and commonly recognized right of strike.

In our recommendations, there is no tendency or forethought to minimize the wholly magnificent work which both labor and management have accomplished in this time of emergency. Both have shown marked devotion and self-sacrifice and patriotism, but just as there are and have been and will be selfish, greedy, grasping and un-understanding management, so there has been, is, and will be a like attitude among small groups, but groups which may be in key industries, of the duties and obligations of labor in time of war. Notwithstanding the magnificent work that has been done since Pearl Harbor, according to the statistics of the Bureau of Labor, there have been something like twenty million man-days of labor lost by reason of strikes.

Legislation Against Strikes Must Offer an Alternative

"It will not do, either for us to recommend, or for any legislative body to pass, any law forbidding strikes or other work stoppages unless there is provided a reasonable, a fair, and a speedy means of determining the justice of the demands of labor or the grievances under which it claims to suffer.

"Your Committee did not deem itself sufficiently advised to attempt to draft a definitive bill. The rapid progress of the war may make—and God knows we all hope it will make—unnecessary the passage of any legislation; but we must recognize the very thing that is expressed in the resolution of our dear friend, Charlie Hay, that the prospective end of a part of the conflict will not only bring about the disinclination of men and women to continue in necessary war industries but it may permit discontent or temporary or local grievances to obstruct the manufacture, production and transportation of things which we must have, not as a matter of desire, but as a matter of necessity, for a complete victory and a complete termination of hostilities. Perhaps you gentlemen who live in the Middle West or on the East Coast do not have as keen a realization of the conflict that is waged in the Pacific, but I know that many of you have sons who are devoted to its successful termination.

Principles To Be Considered in Legislation

"So your Committee has felt, without making recommendation for any legislation and in the hope that no legislation will be necessary, that certain principles be borne in mind and con-

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AMERICAN BAR ASSOCIATION

Journal

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The Existing World Court

American lawyers should give immediate heed and thought to what many informed persons regard as a critical situation concerning the future of the Permanent Court of International Justice. The proposals emanating from the Dumbarton Oaks conferences are frankly labelled as "tentative." The form and vitality of international judicial organization were obviously treated and left as "unfinished business."

The proposals say only that the ultimate plan shall include *"an* international court of justice" to be "the principal judicial organ" of the projected "Organization." Chapter VII is devoted to this subject, and references to *a* court are made in several other chapters (cf. Chapter IV, 1, c; ch. V, B, 4; ch. VIII, A, 3, 6). Retention and strengthening of the present Court, as advocated by the American Bar Association and lawyers generally, are neither proposed nor rejected. For the most part, the structure and scope of the judicial organization are left for later consideration.

The President has properly said that the Dumbarton Oaks proposals "have been made public to permit full discussion by the people of this country prior to the convening of a wider conference." The Secretary of State has said that "a set of completed proposals" will later be "placed before the peace-loving nations of the world as a basis for discussion at a formal conference to draft a charter of the projected organization for submission to the governments." It is understood that before the United Nations conference is convened in January or February, American experts will put into definitive form a plan for judicial organization.

Elsewhere in this issue is published the notable letter which forty-four American lawyers and judges, headed by Charles Evans Hughes and John Bassett Moore, have sent to the Secretary of State, in advocacy of the retention of the Permanent Court of International Justice and the existing Statute, with such amendments as will best make it an essential agency of the international organization of the nations for peace and law.

In furtherance of public study of the subject, the JOURNAL prints this month a brilliant review, by Louis Sohn, of Professor Kelsen's book on "Peace Through Law." Because of its clear thinking and incisive analysis of the fundamentals of international adjudication, this review ranks with the book itself; readers can form their own opinions as to the conflicting views.

Under the leadership of President Simmons, the Association has developed a program to make specific its contribution and assistance as to the World Court as well as on the other issues left by the Dumbarton Oaks proposals. State and local bar associations, and lawyers in groups and as individuals, should endeavor to make available promptly their thought and considered judgment in support of the Court. The contents of this issue will "high light" for our readers the importance and urgency of action.

National Sovereignty

A timely question has been raised and is being discussed in Congress and elsewhere, as to the meaning of the term "sovereignty" and whether a surrender of national sovereignty may be involved in uniting with other nations for the prevention of another world war and for the decision of disputes between nations by other means than resorting to force.

The recent elucidation of that question in the sessions of the House of Delegates and the notable addresses of distinguished speakers at the sessions of the Assembly furnish much instructive material in regard to the meaning of "sovereignty."

In his address before the Assembly, Manley O. Hudson, Judge of the Permanent Court of International Justice said: "Questions concerning the extent of the treaty-making power concerning the rôle of the different branches of our government in its exercise, concerning the effect of specific attribution to Congress of the power to declare war, all of these are questions which lie within the special competence of the members of the Association, and I am confident that we shall approach them without subordinating either the national interest or the means by which it can be protected."

Judge Orie L. Phillips, at the "Open Forum" to discuss international organization for peace and justice under law said: "It is an act of sovereignty, not a surrender thereof, to enter into an international arrangement to provide a substitute of peaceful processes for war, to create a world order based on law and justice as a substitute for world anarchy."

The full text of the addresses above referred to, and the resolutions of the House of Delegates passed by an almost unanimous vote, appeared in our October issue. Those who desire to form a considered opinion on this important issue will find there a source of timely information.

Those addresses and that resolution support a short and simple definition of sovereignty applicable to the present crises; namely, that sovereignty is the right of a nation to decide, through its organic processes whether to do or not to do acts involving its national security and prosperity.

Not to decide upon and take remedial and preventive action when a nation is faced with danger to its freedom and its very life would certainly be the greatest imaginable surrender of sovereignty.

If the decision of the peace-loving nations involves the exercise of national sovereignty, should not the decision be made with the promptitude, adequacy and permanence appropriate to and characteristic of sovereignty?

Further Views as to International Organization

The Dumbarton Oaks proposals for the organization of the United Nations to prevent aggression are the subject of widespread study and discussion, by lawyers and other citizens. No one has suggested that these proposals have the attributes of finality or completeness. On the contrary, their improvement through public discussion is frankly sought.

Major Grenville Clark presents forcefully his considered views and suggestions in this issue. He is not in full agreement with the actions thus far voted by the House of Delegates; he gives his reasons for his approach to the subject.

Major Clark is a member this year of the Association's Special Committee to Study and Report as to Proposals for the Organization of the Nations for Peace and Law. The opinions which he expresses are his own, not those of the Committee, which has not acted on them. His contribution to the great debate is worth while.

The End of the Year

The year 1944 will be in its final month when this issue comes to the desks of our members. This has been a momentous, fateful year, for the United States and for the world. It has seen the tide of war turn strongly in favor of the United Nations, although the struggle is still tense and tragic on many fronts. It has seen much that is promising come to pass, as augury of the future fulfillment, so far as can be, of lasting peace and justice based on law.

The end of the year is a traditional time, in business and in institutions such as the American Bar Association, for a taking of stock. Members of the profession of law and of its representative organization can afford to undergo such an inventory and appraisal.

For the second time in American history, our republican form of government has lately been subjected to the severe test of a National election in the midst of war. Undoubtedly there was significance in the tremendous vote polled and in the participation of millions of men and women in uniform, many of whom exercised their rights of suffrage while they were literally under enemy fire in remote places. Fundamental American processes of government can function even under the strains of world conflict. There was an intense satisfaction in taking part in this demonstration that the democratic devices of popular election still hold sway in the United States.

The poll showed a sharp difference of opinion among American voters in their choice of personalities. Happily the issues were developed and the contest was waged so as to leave no ground for a claim that a difference or partisan division exists as to the vigorous prosecution of the war to complete victory or as to the building meanwhile of an international organization which can act energetically and in time to prevent future aggression and curb the causes of war. America was more closely united, rather than divided, by the discussion of such issues as related to the war and the peace. In other respects, deep-rooted principles and convictions were not overthrown by the electoral vote, and still remain in the forum of public opinion. For these fortunate results, great credit is due to the leaders and the spokesmen of both political parties. Still more fortunate was the quick, ungrudging acceptance of the majority choice, in the spirit of "let's get on with the war."

The American Bar Association has gained in prestige and usefulness in the trying years such as 1944. Its membership is the largest in its history. Few, if any, of its activities have been curtailed by wartime impediments. It has moved steadily ahead, and has done much to help in the war effort.

The Association's Administrative Procedure Act (the McCarran-Sumners bill) submits enduring principles for the action of the Congress, to safeguard persons and property against arbitrary determinations and directives. The Association's aggressive campaign in behalf of effective international organization, including the present World Court, is getting under way, following the action of the House of Delegates in September. The Association's plans for active assistance to lawyers released from the Armed Forces will tend to lessen any sense of frustration or neglect on the part of men who will find it hard to regain and keep their pace in present-day professional work. In more than a score of different fields of law, the Association is busy with constructive and remedial tasks.

When an organization like the American Bar Association is animate with the desire to fight for endur-

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Review of Recent Supreme Court Decisions

by Edgar Bronson Tolman*

Federal Statutes—Special Act of February 27, 1942—Court of Claims of the United States, Its Judicial Powers and Those of an Administrative and Legislative Character.

The Court of Claims of the United States in addition to its judicial powers has been vested by Congress with non-judicial powers of an administrative character which under §8, Article I of the Constitution, include the power to provide for payment of the debts of the Government. When, however, the court is called upon to decide whether the case involves the exercise of judicial and administrative power, that choice of alternative is a judicial reviewable act.

Pope v. United States, 89 L. ed. Adv. Ops. 24; 65 Sup. Ct. Rep. 16; U. S. Law Week 4007. (No. 28, argued October 16, decided November 6, 1944).

Allen Pope (hereinafter called "contractor") entered into a contract with the Government for the construction of a tunnel as a part of the water system of the District of Columbia. In that contract it was agreed that the "construction office" might order changes in the work and that contractor should be paid for such changes as were ordered "in writing." The contracting officer orally ordered changes in the level of the tunnel and indicated those changes by making a new "B" line on the original plans. The original "B" line indicated the level of the tunnel as originally agreed to and the new "B" line indicated the change of level.

After doing all the work necessary for the construction of the tunnel at the altered level, contractor applied to the Court of Claims to determine his compensation for the additional work done in consequence of the change.

The Court of Claims held that since there was no order in writing for the additional work, his petition for an additional allowance must be dismissed.

Contractor then applied to Congress for the passage of a special act which should direct the Court of Claims to ascertain the amount which would have been allowable if the changes had been ordered in writing and to allow him recovery of what would have been fairly and equitably due him, disregarding the technical defenses arising from the lack of written orders for changes in the contract work.

After the passage of the Special Act, contractor filed a petition with the Court of Claims, but the court dismissed the proceedings on the ground that the Act was unconstitutional as interfering with the judicial power of the Court of Claims. The Supreme Court allowed a writ of certiorari and held that the Special Act was valid insofar as it directed the court to exercise its administrative and legislative powers and that it might be regarded as unconstitutional only insofar as it attempted to direct the manner in which the court should exercise its judicial powers.

The opinion of the Court was delivered by the CHIEF JUSTICE and on the constitutional question he says:

> We perceive no constitutional obstacle to Congress's imposing on the Government a new obligation where there had been none before, for work performed by petitioner which was beneficial to the Government and for which Congress thought he had not been adequately compensated. The power of Congress to provide for the payment of debts, conferred by § 8 of Article I of the Constitution, is not restricted to payment of those obligations which are legally binding on the Government. It extends to the creation of such obligations in recognition of claims which are merely moral or honorary. . . . Congress, by the creation of a legal, in recognition of a moral, obligation to pay petitioner's claims plainly do not encroach upon the judicial function which the Court of Claims had previously exercised in adjudicating that the obligation was not legal. Nor do we think it did so by directing that court to pass upon petitioner's claims in conformity to the particular rule of liability prescribed by the Special Act and to give judgment accordingly.

In referring to the right of Congress to direct the Court of Claims to ascertain and declare the liability of the Government, and the distinctions between the two powers vested in that court, the CHIEF JUSTICE says:

> Congress having exercised its constitutional authority to impose on the Government a legally binding obligation, the decisive question is whether it invaded the judicial province of the Court of Claims by directing it to determine the extent of the obligation by reference, as directed, to the specified facts, and to give judgment for that amount. In answering, it is important that the Act contemplated that petitioner should bring suit on his claims in the usual manner, that the court was given jurisdiction to decide it, and that petitioner by bringing the suit has invoked, for its decision, whatever judicial power the court possesses. . . . In this posture of the case it is pertinent to inquire what, if anything, Congress added to or subtracted from the judicial duties of the Court of Claims by directing

*Assisted by JAMES L. HOMIRE.

that it consider the case and give judgment for the amount found to be due. Stripped of all complexities of detail the case is one in which, simply stated, petitioner has sought to enforce the obligation, which the Government has assumed, to pay him for work done and not paid for. Congress has in effect consented to judgment in an amount to be ascertained by reference to the specified data.

The Court reviewed its prior decisions in which it had been held that it is a judicial function and an exercise of a judicial power to render judgment on consent, and to render judgment by stipulation, or when the defendant is in default, and that in all those cases the Court determined that the unchallenged facts shown of record established a legally binding obligation and adjudicates the plaintiff's right of recovery. The essential element of judgment was held to have involved the exercise of judicial power.

In conclusion the CHIEF JUSTICE says:

> The Court of Claims' determination that the special Act conferred upon it only non-judicial functions and hence that it had no judicial duty to perform was itself an exercise of judicial power reviewable here. *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447. The case is not one where the court below has made merely an administrative decision not subject to judicial review, without purporting to act judicially or to rule as to the extent of its judicial authority as the ground of its action or refusal to act. . . . Jurisdiction to decide is jurisdiction to make a wrong as well as a right decision.

Since the Court of Claims did not hear the case, but dismissed it on the ground that the Special Act was an invasion of its judicial power, the judgment of dismissal was reversed.

Mr. Justice JACKSON took no part in the decision or consideration of this case.

The case was argued by Mr. George R. Shields for Pope and by Mr. Assistant Attorney General Shea for the United States.

Fair Labor Standards Act—Purpose of Act — Split-day Wages and Hours Contracts.

To maintain the same wage levels after the effective date of the Fair Labor Standards Act, an employer made new contracts with employees for payment of wages under a so-called split-day plan. The effect of the plan was to prescribe regular rates of pay which did not represent the rate actually paid for ordinary non-overtime hours and did not allow extra compensation for true overtime hours, and its sole purpose was to perpetuate the pre-statutory wage scale. This split-day plan is held to be in violation of Section 7(a) of the Fair Labor Standards Act, for the reason that it satisfies neither the purpose nor the mechanics of that Section.

Walling v. Helmerich & Paine, Inc., 89 L. ed. Adv. Ops. 1; 65 Sup. Ct. Rep. 11; U. S. Law Week 4002. (No. 27, argued October 17, decided November 6, 1944).

Certiorari was granted here to review the question whether a so-called split-day plan of compensation, under the decision of the Court in *Walling* v. *Belo Corporation*, 316 U.S. 624, violates the provisions of Section 7(a) of the Fair Labor Standards Act. Those provisions limit to 40 hours a week the number of hours an employer may employ his employees, unless the employee receives for time in excess of 40 hours a week compensation at a rate "not less than one and one-half times the regular rate at which he is employed."

Here the employer made new employment contracts in order to maintain the same wage levels after the Act became effective as those which prevailed before. This was done through the so-called "Poxon" or split-day plan. That plan arbitrarily divided each regular shift or "tour" into two parts for purposes of calculating and applying the hourly wage rates. The first four hours of each eight hour tour, the first five hours of each ten hour tour and the first five hours of each twelve hour tour were assigned a specified hourly rate described as the "base or regular rate." The remaining hours in each tour were treated as "overtime" and called for payment at one and one-half times the "base or regular rate." The contracts provide that the "base rate" set forth "shall never apply to more than 40 hours in any work week."

The Supreme Court in an opinion by Mr. Justice MURPHY holds this plan to be in violation of Section 7 (a) of the Fair Labor Standards Act. Stating that the plan here involved satisfies neither the purpose nor the mechanics of the statute, the opinion describes the effect of the plan as follows:

> These so-called "regular" and "overtime" hourly rates were calculated so as to insure that the total wages for each tour would continue the same as under the original contracts, thereby avoiding the necessity of increasing wages or decreasing hours of work as the statutory maximum workweek of 40 hours became effective. Only in the extremely unlikely case where an employee's tours totalled more than 80 hours in a week did he become entitled to any pay in addition to the regular tour wages that he would have received prior to the adoption of the split-day plan. Until more than 80 hours had been worked the plan operated so that the employee could not be credited with more than 40 hours of "regular" work, the remaining time being denominated "overtime." Hence, since the wages under the old system and under the split-day plan were identical, the original tour rates could be used as the simple method of computing wages for each pay period. The actual and regular workweek was accordingly shorn of all significance.

The opinion cites *Overnight Motor Co.* v. *Missel*, 316 U.S. 572, wherein the statutory purpose was described as twofold: (1) to spread employment by placing financial pressure on the employer through the overtime pay requirement; and (2) to compensate employees for the burden of a workweek in excess of the hours fixed in the Act. In condemning the plan in question, Mr. Justice MURPHY analyzes it, in its relation to the statutory requirements, as follows:

> . . . neither objective could be attained under the split-day plan. It enabled respondent to avoid paying real overtime wages for at least the first 40 hours worked in excess of the statutory maximum workweek, thus negativing

any possible effect such a payment might have had upon the spreading of employment. And the plan was so designed as to deprive the employees of their statutory right to receive for all hours worked in excess of the first regular 40 hours one and one-half times the actual regular rate. The statutory maximum workweek of 40 hours was by contract twisted into an 80 hour maximum workweek. No plan so obviously inconsistent with the statutory purpose can lay a claim to legality.

The split-day plan, moreover, violated the basic rules of computing correctly the actual regular rate contemplated by Section 7(a). While the words "regular rate" are not defined in the Act, they obviously mean the hourly rate actually paid for the normal, non-overtime workweek. . . . To compute this regular rate for respondent's employees, assuming the same wages and tours, required only the simple process of dividing the number of hours in each tour by the wages received for that tour. This regular rate was then applicable to the first 40 hours regularly worked on the tours and the overtime rate (150% of the regular rate) became effective as to all hours worked in excess of 40.

But respondent's plan made no effort to base the regular rate upon the wages actually received or upon the hours actually and regularly spent each week in working. Nor did it attempt to apply the regular rate to the first 40 hours actually and regularly worked. Instead the plan provided for a fictitious regular rate consisting of a figure somewhat lower than the rate actually received. This illusory rate was arbitrarily allocated to the first portion of each day's regular labor; the latter portion was designated "overtime" and called for compensation at a rate one and one-half times the fictitious regular rate. Thus when an employee on regular eight hour tours had actually worked 40 hours, respondent could point to the employee's contract and claim that he had worked only 20 "regular" hours and 20 "overtime" hours. Hence he was entitled to no additional remuneration for work in excess of 40 hours except in the unlikely situation, which never in fact occurred, of his actually working more than 80 hours. The vice of respondent's plan lay in the fact that the contract regular rate did not represent the rate which was actually paid for ordinary, non-overtime hours, nor did it allow extra compensation to be paid for true overtime hours. It was derived not from the actual hours and wages but from ingenious mathematical manipulations, with the sole purpose being to perpetuate the pre-statutory wage scale.

Walling v. *Belo Corporation, supra,* was distinguished and held to be not controlling in the instant case.

The case was argued by Mr. Irving J. Levy for Walling and by Mr. Eugene O. Monnet for the employer.

Filled Milk Legislation—Construction and Validity.

The Filled Milk Law is construed to cover milk products from which the milk fat has been largely removed, but replaced by other fats and fortified with vitamins, even though no ingredient is added to make the products simulate milk products made from whole milk.

Even though the products are wholesome and contain the nutritional elements of whole milk products, Congress may constitutionally prohibit their shipment in interstate commerce in order to prevent confusion of the products with those made from whole milk, notwithstanding proper labeling describing the products.

Carolene Products Co. v. United States, 89 L. ed. Adv. Ops. 13; 65 Sup. Ct. Rep. 1; U. S. Law Week 4003 (No. 21, argued October 16 and 17, decided November 6, 1944).

This opinion deals with questions relating to the construction and constitutionality of the Filled Milk Act of which petitioners were convicted of violation. The Act bans filled milk from shipments in interstate commerce, and defines the proscribed product as any milk "whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, so that the resulting product is in imitation or semblance of milk . . ., whether or not condensed, evaporated, concentrated, powdered, dried or desiccated."

The products in question are manufactured from skim milk, to which are added cottonseed or cocoanut oil and fish liver oil containing vitamins A and D. The process includes pasteurization of the milk, evaporation, homogenization of the mixture and sterilization. The compound is sold under various trade names in cans of the same size and shape as those used for evaporated milk, and the contents of the cans are practically indistinguishable by the buying public from evaporated whole milk, but the cans are truthfully labeled to show the trade names and the ingredients.

The convictions are challenged on the grounds: (a) the compounds involved here are not covered by the rationale of the Act; (b) the compounds are not "in imitation or semblance" of a milk product; and (c) since they are wholesome food products sold without fraud, Congress may not prohibit their shipment in view of the due process clause of the Fifth Amendment.

The first contention was based on the theory that fortification of the products with vitamins A and D, by a technique developed since passage of the Act, has cured the nutritional deficiencies which the Act was intended to eliminate. Hence, it is argued, the products here involved are not within the intent of the Act.

This argument, and others, advanced by the convicted parties, are rejected by the Supreme Court in an opinion by Mr. Justice REED, and the convictions are affirmed. In rejecting the first contention, the Court points out that although the vitamin deficiency of filled milk products was an important factor in inducing passage of the law, it was not the only one. In addition, another factor was the possibility and actuality of confusion of the products in the minds of the public. This reason still persists.

As to the second contention, the argument runs that something must be added to the natural product to make the compound simulate milk. Further, reliance was placed on an analogy to an interpretation of a section of the New York Farms and Markets Law dealing with oleomargarine. This contention was also rejected.

In conclusion, the constitutionality of the Act was sustained, not-

withstanding that the products are wholesome and are labeled truthfully in description of their actual nature. But the power of Congress over interstate commerce is sustained in its present exercise, because it tends to prevent confusion in commerce of a cheap product with another product from which the natural milk fats have not been removed. Mr. Justice REED says:

> Under the first point of this opinion, we have determined that the avoidance of confusion furnished a reason for the enactment of the Filled Milk Act. The trial court took judicial notice, as did the District Court of the District of Columbia, *United States v. Carolene Products Co.*, 51 F. Supp. 675, 678-79, and as we do, of the reports of the committees of the House of Representatives and the Senate which show that other considerations than nutritional deficiencies influenced the prohibition of the shipment of filled milk in interstate commerce. These unchallenged reports as we indicated in part "First" above, furnish an adequate basis, other than unwholesomeness, for the action of Congress. The reports show that it was disputable as to whether wholesome filled milk should be excluded from commerce because of the danger of its confusion with the condensed or evaporated natural product or whether regulation would be sufficient. The power was in Congress to decide its own course. We need look no further.
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> In the action of Congress on filled milk there is no prohibition of the shipment of an article of commerce merely because it competes with another such article which it resembles. Such would be the prohibition of the shipment of cotton or silk textiles to protect rayon or nylon or of anthracite to aid the consumption of bituminous coal or of cottonseed oil to aid the soybean industry. Here a milk product, skimmed milk, from which a valuable element—butter-fat—has been removed is artificially enriched with cheaper fats and vitamins so that it is indistinguishable in the eyes of the average purchaser from whole milk products. The result is that the compound is confused with and passed off as the whole milk product in spite of proper labeling.
>
> When Congress exercises a delegated power such as that over interstate commerce, the methods which it employs to carry out its purposes are beyond attack without a clear and convincing showing that there is no rational basis for the legislation; that it is an arbitrary fiat. This is not shown here.

In *Sage Stores Company et al.* v. *The State of Kansas, ex rel. A. B. Mitchell*, 89 L. ed. Adv. Ops. 21; 65 Sup. Ct. Rep. 9; U. S. Law Week 4066, (No. 34, argued October 17, decided November 6, 1944), the Court reviewed quo warranto proceedings brought by the State of Kansas to enforce its law against the manufacture and sale of filled milk products. The facts and circumstances were similar to those involved in *Carolene Products Company*, above reviewed, except that in addition there was a finding of fact that the filled milk product is partially inadequate in the diet of infants and children. This additional finding of fact made the case even clearer and more definite than that made in the *Carolene Products Company* case. Consequently, in an opinion by Mr. Justice REED, the Kansas legislation was sustained against a challenge brought under both the equal protection and due process clauses of the Fourteenth Amendment.

Mr. Justice BLACK and Mr. Justice DOUGLAS concurred in the result in both cases.

No. 21 was argued by Mr. Samuel H. Kaufman for the Carolene Products Co. and by Mr. Chester T. Lane for the Government; No. 34 was argued by Messrs. Samuel H. Kaufman and Thomas M. Lillard for Sage Stores, et al. and by Mr. C. Glenn Morris for the State of Kansas.

Summary

Criminal Law—Conspiracy to Acquire Gold Bullion Without a License—Conspiracy to Counterfeit.

Bates v. United States, 89 L. ed. Adv. Ops. 24; 65 Sup. Ct. 15; U. S. Law Week 4010. (No. 92, decided November 6, 1944).

Elbridge Gerry Bates, one Smith and other defendants were convicted of conspiring to obtain gold without a license and to perform two specified acts of counterfeiting. The Court of Appeals, Seventh Circuit, reversed the conviction of Smith but affirmed that of Bates on the ground that the jury could have found that Bates had conspired with unknown Nazi agents to export gold. The Supreme Court took the case on certiorari of Bates and Smith.

The Government, however, in its brief in the Supreme Court formally conceded that Bates' conviction could not be sustained on that ground. The brief admits that his story of negotiations with Nazi agents was sham, as shown by other evidence on the trial. The Government also conceded that it had no evidence and that there was none in the record to support petitioner's conviction on any theory of a conspiracy to export gold on the counterfeiting charges.

But the Government argued that there was evidence in the record sufficient to sustain the conviction of both Bates and Smith of conspiracy to acquire gold without the prescribed license.

The Court, in a per curiam opinion, held that on the Government's concession the judgment of the Court of Appeals could not be sustained. They declined to consider the Government's contention that the judgment can be sustained on other grounds since it was regarded more appropriate that the Court of Appeals consider that question in the first instance.

The judgment was vacated and the cause remanded to the Circuit Court of Appeals for further proceedings.

There was no oral argument in this case.

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APPEALS — *"Shortening Records on Appeals in Civil Cases:"* The bulk and cost of records on appeal, especially under current conditions as to printing, are dealt with in a "Report to the Judicial Council of the State of New York on Shortening Records on Appeal in Civil Cases," prepared by Harry D. Nims of the New York Bar, with the assistance of Leonard S. Saxe, Executive Secretary of the Judicial Council. It is published in the October issues of the *New York State Bar Association Bulletin* (Vol. 16—No. 4; pages 139-157) and the *Journal of the American Judicature Society* (Vol. 28—No. 3; pages 73-82.) Although concerned primarily with improvement of the present New York system, this study may be of interest in all jurisdictions. Among other things, it recommends adoption of the so-called "appendix method" now in use in several of the United States Circuit Courts of Appeals as well as in Wisconsin and California. As described by Mr. Nims, the appendix method "consists of transmitting to the appellate courts a typewritten copy of all the papers, proceedings and evidence of the trial and of printing as an appendix to the brief (i.e., matter bound together with the brief) or supplement to the brief (i.e., matter bound separately from the brief) only so much of the typewritten matter as is material to the questions presented by the appeal." In addition to the "appendix method," Mr. Nims favors also the adoption of a rule, following the practice in Pennsylvania and Connecticut, which will require both the appellant and respondent to print, at the opening of their respective briefs on appeal, a concise statement or summary of the questions to be raised and will ordinarily limit the appellate review to the stated questions. Other recommendations are an increase in the part of the record page which is devoted to printed matter, a reduction of the over-all size of the page so as to conform to that used in records on appeal to the United States Supreme Court, the elimination of folio numbers and of the printing of unnecessary exhibits and papers and unnecessary parts thereof, and of the paragraphing of answers to questions in testimony. (Address: New York State Bar Association Bulletin, 90 State Street, Albany 7, New York, or the American Judicature Society, Ann Arbor, Michigan. Information is that the Bulletin is ordinarily distributed only to members of the State Bar Association, but that current copies of the Judicature Society Journal are, within limits, obtainable without charge, on request.)

BANKRUPTCY—*"Effect of Discharge: Ancillary Jurisdiction of Federal Court":* Until 1934, it was the settled rule that a federal court which granted a discharge in bankruptcy had no residuary power to adjudge the effect of the discharge upon a claim asserted later against the debtor. This question was left to the court in which suit on the claim was brought. In 1934, however, the Supreme Court held that the federal court had ancillary jurisdiction to determine whether this later suit is barred by the discharge and, if so, to stay the suit by an injunction issuing upon a "supplemental bill" by the bankrupt. The rule was made applicable regardless of diversity of citizenship or of the jurisdiction of any state court over the later claim. In the September issue of the *Virginia Law Review* (Vol. 30—No. 4; pages 531-542), Professor Garrard Glenn, an authority in the field of bankruptcy law, sets forth his view that the Supreme Court should clarify, if not overrule, the broader rule declared in 1934. He maintains that the new doctrine disregards "all logical ideas of process" and fails to draw a clear distinction "between the discharge as such and its effect as barring a particular debt." He thinks that clarification should be easy, inasmuch as the lower federal courts have, in several instances, themselves in effect limited the Supreme Court's ruling. A creditor in the bankruptcy cannot ask the court to determine whether the discharge will bar his particular debt. If a debtor does not plead his discharge, and allows entry of judgment against him by default, he cannot ask the bankruptcy court to enjoin collection of the judgment. The bankruptcy court has no power to decide whether or not the debtor made a new promise to pay a debt otherwise discharged. Professor Glenn urges that the Supreme Court ought to accept these limitations, either simply by denial of *certiorari* or by direct acceptance.

Editor's Note: This department provides a means by which practicing lawyers may find if the current law reviews and other law magazines contain material which may help or interest them, primarily as assistance in their professional work.

Members of the Association who wish to obtain any article referred to should make a prompt request to the address with remittance of the price stated. If copies are unobtainable from the publisher, the JOURNAL *will endeavor to supply, at a price to cover the cost plus handling and postage, a planograph or other copy of a current article.*

The need for ancillary jurisdiction has been said to arise from the desire to protect a debtor-wage earner, borrowing on a future salary assignment, from persecution by his creditor in continued actions. Professor Glenn urges that any such need is illusory, for the debtor is protected by the common law in force in his state, in that there is available a tort action in the nature of abuse of process or the equity "bill of peace." From the procedural point of view, the present rule seems to Professor Glenn not only to be useless, but actually dangerous in that it enlarges unnecessarily the powers of the federal bankruptcy courts. (Address: Virginia Law Review, Charlottesville, Va.; price for a single copy: $1.25).

CONSTITUTIONAL LAW—*Anti-Trust Legislation—"Insurance as Commerce in Constitution and Statutes:"* Lawyers interested in the skillful analysis of decisions of the Supreme Court will not fail to obtain promptly, and to read carefully, Professor Thomas Reed Powell's brilliant commentary, in the September issue of the *Harvard Law Review* (Vol. LVII—No. 7, pages 937-1008, on the opinions in the *South-Eastern Underwriters* case (64 Sup. Ct. 1162, decided June 5, 1944). By a vote of four justices to three, it will be recalled, the Court there held that the group of fire insurance companies were indictable under the Sherman Act for alleged violations in connection with their insurance business. The decision rested necessarily upon conclusions that the insurance business shown by the record constituted commerce among the states in the constitutional sense and that as a legislative enactment the Sherman Act of 1890 had been intended to and does apply to such fire insurance business.

Dissection of decisions of the Supreme Court have been Professor Powell's delight for a quarter of a century—those under the "commerce clause" he has relished most. With characteristic references to the members of the Court who joined in its decision as "the minority quartette," Professor Powell writes his own dissenting opinion with all of the mature and vigorous scholarship at his command. His title—"Insurance as Commerce in Constitution and Statute"—reflects the main point of his rebuttal of the reasoning in the Court.

As he sees it, the decision stands or falls on the basic question: Is the insurance business "commerce" within the meaning of the applicable constitutional provisions and also of the terms of the statute as envisaged by the Congress which enacted the Sherman Act? By a masterful analysis of the Court's own body of law, he maintains that the insurance business as a business is not commerce and that the fact that the business as conducted requires the use of interstate transportation and communication does not make it commerce in the constitutional sense. He does not deny that Congress holds much legislative power over the insurance business. "All Congress has to do," he says, "is to wield its accredited legislative power. This, however, is a very different thing from the judicial wielding of unaccredited legislative power by a minority, or even by a majority, of a full judicial bench in the face of frequent professions of the judicial duty to follow rather than to lead or to obstruct."

Anyone familiar with Professor Powell's writings has learned to look not only for incisive analysis, but also for pithy and picturesque phrasing. This latest instance of his stimulating and entertaining dissection of the mental processes of members of the Court confirms that he continues with undiminished robustness his intrepid surveillance of that tribunal. He suggests that the Court's decision in the *South-Eastern Underwriters* case may have significance "as an illustration of unrestraint by any self-denying ordinance on the part of some who most strongly preach the gospel of judicial self-limitation." Referring to the broad scope of interstate commerce as now "judicially defined", he points out that human transporters are thus made to be engaged in such commerce even if they "carry whiskey for their own consumption or friends for their own enjoyment" (citing *United States* v. *Hill*, 248 U. S. 420 and *Caminetti* v. *United States*, 242 U. S. 470). Taking issue with the loose use of words which in law had acquired, and long retained, precise connotations, he remarks, "Common parlance knows many figures of speech, but constitutional interpretation can no more be directed by figures of speech than by puns." He concludes with a pointed Powellian thrust, perhaps conceived by him as an understatement:—"It is hardly necessary to add that detailed consideration of the opinion in no way modifies the shock to the profession when the result of the decision was announced."

One wonders whether the polemic fervor with which Professor Powell has presented his "dissent" may not have been inspired, at least in part, by a realization that one of the four concurring justices studied constitutional law at "T.R.'s" own portico, then on Morningside Heights in New York City. In any event, this article is "one for the books"; no lawyer should be without it. (Address: Harvard Law Review, Gammett House, Cambridge, Mass.; price for a single copy: 75 cents).

CONSTITUTIONAL LAW—*"Further Developments under the Rule of Erie R.* v. *Tompkins:"* A note by William E. Chritton in the May issue of the *Wisconsin Law Review* (Vol. 1944—No. 3; pages 163-170) discusses difficulties which have confronted the federal courts in ascertaining and applying state law under the doctrine of *Erie Railroad* v. *Tompkins* (304 U.S. 64). It is indicated that the trend of Supreme Court decisions since the *Tompkins* case has been to limit the normal judicial functions of the federal courts and to require them "to decide a case as the state court *would* decide it and not as the state court *should* decide it," even where

the state decisions are in conflict or there are no state decisions in point. (Address: Wisconsin Law Review, Madison, Wis.; price for a single copy: 75 cents).

CORPORATIONS — *Rights of Bondholders — "The Duties of the Trustee of a Mortgage Given to Secure Bondholders:"* A useful summary of the Pennsylvania decisions relating to the status of a trustee of a corporate mortgage appears as the leading article in the October issue of the *Dickinson Law Review* (Vol. XLIX, No. 1; pages 1-15). The author is Professor Joseph P. McKeehan of the Dickinson School of Law. The effect of exculpatory clauses in the indenture and the extent to which, in the absence of limiting provisions of the indenture, the trustee is bound to take affirmative action in the interests of the bondholders, are among the points covered. (Address: Dickinson Law Review, Carlisle, Pa.; price for a single copy: 75 cents.)

CRIMINAL LAW—*"Criminal Procedure Under Proposed Federal Rules Compared with Wisconsin Statutes":* In the summer issue of the *Marquette Law Review* (Vol. XXVIII—No. 2; pages 75-114), Brooke Tibbs, Special Assistant District Attorney for Milwaukee County in Wisconsin, makes a detailed comparison of the proposed Federal Rules of Criminal Procedure and various analogous provisions of the Wisconsin statutes. From this comparison, the author concludes that there is a need for simplification and improvement of the state procedure in criminal cases. Mr. Tibbs' study suggests that like comparisons of the proposed Federal Rules with the existing procedure in other states might prove helpful in focusing attention on deficiencies. For such comparisons his article would supply a pattern or starting-point. (Address: Marquette Law Review, Milwaukee, Wis.; price for a single copy: $1.00).

DECLARATORY JUDGMENTS — ALTERNATIVE REMEDIES — *"Pennsylvania's Clarifying Amendment for Declaratory Judgments":* Professor Edwin Borchard of The Yale Law School, recognized as the leading authority on declaratory judgments, reports in the September issue of the *University of Pennsylvania Law Review* (Vol. 93—No. 1; pages 50-57) concerning a recent amendment to Section 6 of the Uniform Declaratory Judgments Act in Pennsylvania. The purpose of the amendment, as drafted by the late Chief Justice Robert Van Moschzisker of the Pennsylvania Supreme Court, is said to be to make it clear that a declaratory judgment may be sought even where another remedy is available, unless the alternative remedy is a special remedy provided by statute for a specific type of action. The effect of the amendment is said by Professor Borchard to be to counteract decisions of the Pennsylvania Supreme Court which have held that, under the Uniform Declaratory Judgments Act as originally enacted in that state, a declaratory judgment will not be granted where another remedy is available. Professor Borchard indicates that this restrictive interpretation has not been followed in other states aside from Maryland. His commentary refers also to several recent decisions in other jurisdictions which he looks on as frustrating the usefulness of the declaratory procedure. (Address: University of Pennsylvania Law Review, 34th and Chestnut Streets, Philadelphia 4, Pa.; price for a single copy: 75 cents).

DOMESTIC RELATIONS—*"Unsoundness of Mind as Ground for Divorce: A Proposal:"* In the May issue of the *Wisconsin Law Review* (Vol. 1944—No. 3; pages 106-123), John J. Schneider, former Divorce Counsel for Fond du Lac County, Wisconsin, treats objectively the problem of unsoundness of mind as a ground for divorce, and advocates the enactment of a law in Wisconsin which will authorize, subject to certain provisos, the granting of a divorce when either party is "incurably of unsound mind." The author outlines the social aspects of the problem which will unquestionably be aggravated by the present war, points out that twenty-four states, as well as England, now have legislation making post-nuptial insanity a ground for divorce, and then gives a detailed analysis of the provisions of his proposed Wisconsin statute, all in relation to the laws and the decisions of other jurisdictions. (Address: Wisconsin Law Review, Madison, Wis.; price for a single copy: 75 cents).

EVIDENCE—*A Report on the "Model Code of Evidence":* The American Law Institute's "Model Code of Evidence" was vigorously criticized by a Committee of the State Bar of California in a report printed in the July-August issue of its *Journal*. The Committee's main objections to the Code are: (1) That it would make the application of all rules of evidence in each case subject to the discretion of the trial judge, and especially would authorize the judge to deny the admission of any evidence made relevant by the rules if in his discretion he feels the evidence should not be received in that particular case; (2) That it would make admissible not only hearsay evidence but multiple hearsay; (3) That it would make admissible in evidence the opinions and conclusions of lay witnesses upon any factual issue; and (4) That while it purports to preserve to a limited degree the rules of privilege known in the common law and those declared by statute, practically and actually the Code would destroy all privilege. The report discusses also many minor objections to the Code. The Committee's recommendation which opposes the enactment of the Code or any part of it into California law, is ably presented. (Address: Journal of the State Bar of California, 2100 Central Tower, Los Angeles 13, Cal.; price for a single copy: 20 cents.)

EVIDENCE—*Questions of First Impression—"Burden of Proof and the Judicial Process":* Difficulties in the application of existing rules of law, under English cases governing the burden of proof, are precisely analyzed in a commentary by Professor Julius Stone, in the July issue of *The Law Quarterly Review* (Vol. 60—No. 239; pages 262-284). The article is directed particularly to the decision of the House of Lords in *Joseph Constantine Steamship, Ltd. v. Imperial Smelting Corporation, Ltd.* [1942] A. C. 154, which held that in a suit on a contract, the burden rested on the plaintiff, who resisted a plea of frustration, to show that the defendant's fault had induced the frustration. Apparently the case was one of first impression in the House of Lords. Professor Stone reviews earlier decisions of the English courts, in both civil and criminal cases, and concludes that in the absence of conclusive authority in precedents, the courts ought to avoid relying upon "ambiguous *obiter dicta,*" and rather should proceed with a direct consideration of questions of policy in making a new rule. (Address: The Law Quarterly Review, The Carswell Co., Limited, Toronto, Canada; price for a single copy: $1.75).

FEDERAL PRACTICE AND PROCEDURE—*"The Revision of the Federal Rules of Civil Procedure":* In the September issue of the *Virginia Law Review* (Vol. 30—No. 4; pages 513-530), Circuit Judge Armistead M. Dobie, of the United States Circuit Court of Appeals for the Fourth Circuit, who is a member of the Supreme Court's Advisory Committee on Federal Rules of Civil Procedure, outlines and discusses the various changes and amendments contained in the "Preliminary Draft of Proposed Amendments to Rules of Civil Procedure in The District Courts of The United States", which was issued by the Advisory Committee in May of this year. Although some thirty-four Rules presently in force would be affected by the proposed amendments, Judge Dobie points out that the suggested changes "have for the most part been offered in the interest of clearness, in order to iron out some apparent inconsistencies or ambiguities which have given trouble to courts and lawyers." Of particular interest are the three alternative proposals for the amendment of Rule 12, which provide, among other things, for the deletion of the bill of particulars (Rule 12(e)), the addition of the defense "failure to join an indispensable party" (Rule 12(b)(7)), and the assimilation of summary judgment procedure to motions to dismiss for failure to state a claim (Rule 12(b)(6)) and motions for judgment on the pleadings (Rule 12(c)), at least where matters outside the pleadings are presented to the court. Also of interest are the suggestions looking toward the further extension and liberalization of the Rules relating to depositions and discovery and motions for summary judgment (Rules 26, 56), the revision and clarification of the Rules governing motions for a directed verdict and judgments (Rules 50, 54), the addition of a new Rule which would regulate in detail the procedure in condemnation proceedings in the federal courts (Rule 71A), and the provision extending the Federal Rules to proceedings to enforce obedience to administrative subpoenas and to appeals in such proceedings (Rule 81). Judge Dobie's authoritative appraisal of the need for many of the proposed amendments will be valued by all lawyers who have had occasion to practice under the Federal Rules during the six years of their effective operation. (Address: Virginia Law Review, Charlottesville, Va.; price for a single copy: $1.25).

MONOPOLIES—*"Antitrust Prosecutions of International Business":* A chronological review of the principal prosecutions of "foreign monopolies" by the American Government, an exposition of the enforcement techniques used in such attacks on international business, and an examination of the current anti-trust policy of the Government as revealed in the much-criticized "consent decrees," are included in an article under the above title, by Israel B. Oseas of the Anti-trust Division of the United States Department of Justice, in the September issue of the *Cornell Law Quarterly* (Vol. XXX—No. 1; pages 42-65). The effectiveness of proceedings under the Sherman Act where foreign elements are involved in an alleged restraint of trade is evaluated according to the author's view of the experience of the Anti-trust Division. He states his opinion to be that although the maintenance of what he would regard as a freely-competitive America in a monopolistic world is "too great a task for our anti-trust laws alone," "they are in many situations a more powerful force toward that end than has commonly been believed," and that the "extent to which this force can be made effective still remains to be seen." As an exposition of what an attorney in the Department of Justice regards as the effectiveness of recent prosecutions of international trade, this article is informative. (Address: Cornell Law Quarterly, Myron Taylor Hall, Ithaca, N.Y.; price for a single copy: $1.00).

REAL PROPERTY LAW—*Promises Respecting the Use of Land—"The Law of Real Covenants: Exceptions to the Restatement of the Subject by the American Law Institute":* The vigorous controversy which has raged as to the fifth and last chapter of the American Law Institute's Restatement of the Law of Property, dealing with the law of covenants which run with land, is continued on a high plane in the September issue of the *Cornell Law Quarterly* (Vol. XXX—No. 1; pages 1-41), by Henry Upson Sims, of Alabama, President of the American Bar Association in 1929-30, and author of authoritative books and law review articles on real property law. Previous chapters in the discussion have been contributed by other writers (See A.B.A.J., Vol. 30; July, 1944; pages 399-40). Mr. Sims, a member of the Council of the Insti-

tute, begins by saying that "It is unfortunate" that the restatement on this subject "should have reflected the particular views of the Reporter (Professor Oliver S. Rundell) and a majority of his Advisers"; also, that "it is more unfortunate" that the subject came before the body of the Institute "on the last day, and almost at the last hour, of the annual meeting, when it could not be adequately debated for lack of time." Mr. Sims points out that the vote of 17 to 17 left the Reporter's views "legislatively sustained." The article then proceeds with a scholarly and well-documented résumé of the origin and history of the law of real covenants, both as to the running of benefits and the running of burdens. The thesis is supported that the law in America has generally not followed the English rejection of the running of burdens at law, and this is followed by an exposition of the American requirements for the enforcibility of such covenants, as contrasted with the Institute's Restatement. Mr. Sims concludes by discussing a few cases in which he thinks that the "usefulness of covenants as compared with other devices for inter-party protection would seem apparent; cases which show that recognition of the running of covenants should be extended rather than checked, and that the English law enforcing only restrictive covenants is insufficient to meet the needs of Society." So spirited a debate upon the law of property rights, as something controlled by historic precedents and principles, seems refreshing, somehow, in an era in which the consciousness of the very existence of property and rights seems often to be dulled by incessant assertions of the paramountcy of governmental agencies and their powers. In any event, Mr. Sims has brought together a wealth of case material and analysis, covering decisions in all states as well as in England, which is likely to be of much use to lawyers having to deal with real property. (Address: Cornell Law Quarterly, Myron Taylor Hall, Ithaca, N.Y.; price for a single copy: $1.00).

REAL PROPERTY—*"Leases for the Duration of the War": In the May-June issue, just received, of the Illinois Law Reveiw of Northwestern University* (Vol. XXXIX—No. 1; pages 85-90), a note on *Stanmeyer* v. *Davis*, 321 Ill. App. 227, brings together usefully the recent English and American cases on leases which contain, as to term, the currently familiar phrase, "for the duration of the war." For reasons at variance with some of the precedents analyzed in the note, the Illinois court held the phrase to be indefinite and too uncertain as to the length of the lease, and so to create only a tenancy at will. (Address: Illinois Law Review, 357 East Chicago Avenue, Chicago, Ill.; price for a single copy: $1.00).

TORTS—*Contributory Negligence—"Montana Applications of the Last Clear Chance Doctrine:"* Acting Dean J. Howard Toelle of Montana State University Law School is the author of a study of the "last clear chance" rule, in the Spring issue of the *Montana Law Review* (Vol. V—Spring, 1944; pages 12-33). Professor Toelle considers primarily the development of the doctrine by the Montana courts; reference is made also to the historical background and to illustrative decisions in other jurisdictions. He suggests that the "last clear chance" doctrine is essentially a device to modify the rigors of the defense of contributory negligence, and that a future development may well be in the direction of an apportionment of damages, rather than absolving the plaintiff entirely from his own negligence. (Address: Montana Law Review, Missoula, Montana; price for a single copy: $1.00).

WORKMEN'S COMPENSATION—*Federal Employment Liability Act—"Workmen's Compensation for Railroad Employees:"* An article by Vernon X. Miller in the June issue of the *Loyola Law Review* (Vol. II—No. 2; pages 138-162) proposes that the Federal Employers' Liability Act, even as amended in 1939, should be supplanted by a compensation scheme for all railroad workers. Mr. Miller is Faculty Editor of the *Review*. He rests his proposal on his acceptance of the underlying social merit of workmen's compensation as compared with the hazards of litigation in a tort action. He expresses the opinion that even under the clarifying amendments enacted in 1939, recovery by the employee, although aided by the more "liberal" trend of decisions, is still subject to various burdens of proof. He finds also that doubt continues as to the right of a railroad employee to seek the benefit of a state compensation statute instead of suing to recover under the Federal Act. (Address: Loyola Law Review, Loyola University School of Law, New Orleans, La.; price for a single copy: $1.00).

An Early View of the Law of Nations

THE law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world; in order to decide all disputes, to regulate all ceremonies and civilities, and to insure the observance of justice and good faith, in that intercourse which must frequently occur between two or more independent states, and the individuals belonging to each. This general law is founded upon this principle, that different nations ought in time of peace to do one another all the good they can; and in time of war as little harm as possible, without prejudice to their own real interests. And, as none of these states will allow a superiority in the other, therefore neither can dictate or prescribe the rules of this law to the rest; but such rules must necessarily result from those principles of natural justice, in which all learned of every nation agree; or they depend upon mutual compacts or treaties between the respective communities; in the construction of which there is also no judge to resort to, but the law of nature and reason, being the only one in which all the contracting parties are equally conversant, and to which they are equally subject."

—SIR WILLIAM BLACKSTONE

Tax Notes

Prepared by Committee on Publications, Section of Taxation: Mark H. Johnson, Chairman, New York City, Gustave Simons, Howard O. Colgan and Martin Roeder, New York City, and Allen Gartner, Washington, D. C.

The Tax Section at its annual meeting adopted several proposals for important statutory changes:

(1) The rule of *Dobson* v. *Com'r.* 320 U.S. 489, which deprived the circuit courts of the power to reverse Tax Court decisions on issues of "tax accounting", would be modified so that appellate jurisdiction from the Tax Court would be the same as that from district courts.

(2) Liens for estate and gift taxes would be inoperative against bona fide purchasers, pledgees, or mortgagees.

(3) The period for assessment of estate and gift taxes against a transferee would be the same as against the estate or donor, except in the case of insolvency.

(4) For the purpose of the excess profits credit under I.R.C. § 718 (c) (5), invested capital would be carried over in a reorganization even though there were two or more "transferors".

(5) Invested capital would not be reduced by dividends on preferred stock distributed within the first sixty days of the taxable year.

(6) The time for qualification of employees' trusts would be extended until December 31, 1945.

(7) The Tax Court would be given jurisdiction over manufacturers' excise taxes.

(8) The sales price subject to excise tax, in the case of a sale to a controlled selling agency, would be the same value as in the case of similar sales between independent parties.

Members are invited to transmit their own suggestions to the Secretary of the Section, Robert C. Vincent, 15 Broad Street, New York 5, New York, who will forward them to the chairmen of the appropriate committees for consideration and recommendation to the Section.

Supreme Court Docket

The following are some of the interesting questions which the Supreme Court has consented to review in beginning its 1944-1945 term:

Expenses: May a judge deduct campaign expenses, either as an expense or as a loss? *McDonald* v. *Com'r,* 139 F. (2d) 400 (C.C.A. 3), cert. granted April 10, 1944.

Community property: Must the income tax law recognize the division of income between husband and wife under the 1939 elective community property law of Oklahoma? *Com'r* v. *Harmon,* 139 F. (2d) 211 (C.C.A. 10), cert. granted April 3, 1944.

Aliens and foreign corporations: Under pre-1942 law, was a non-resident alien or a foreign corporation required to have a business in the United States in order to qualify under the "office" provision of the statute? *Helvering* v. *Scottish American Investment Co.,* 139 F. (2d) 419 (C.C.A. 4), cert. granted May 29, 1944; *Com'r* v. *Scottish American Investment Co.,* 142 F. (2d) 401 (C.C.A. 3), cert. granted Oct. 9, 1944.

Creditor reorganizations: Does the Bankruptcy Act (which is still operative in the case of non-transfer reorganizations) require a reduction of basis of the corporations property on account of the satisfaction of its indebtedness by the issuance of stock worth less than the debt but of equal par value? *Claridge Apartments Co.* v. *Com'r,* 138 F. (2d) 962 (C.C.A.7), cert. granted March 27, 1944.

Liens: May a landlord's lien under state law be superior to the lien of the United States for taxes? *U. S.* v. *Waddill, Holand & Flinn, Inc.,* 182 Va. 351, 28 S.E. (2d) 743, cert. granted May 29, 1944.

Exemption of state income: May a state be subjected to income tax upon a business enterprise which is an incident of its conservation program? *State of New York* v. *U. S.* 140 F. (2d) 608 (C.C.A. 2), cert. granted June 12, 1944.

Sale of oil and gas property: Where the taxpayer "sells" a leasehold interest and well equipment for a lump sum plus a royalty interest, is the entire consideration taxable as ordinary income (subject to depletion), or is the portion attributable to the equipment to be treated as capital gain? *Choate* v. *Com'r,* 141 F. (2d) 641 (C.C.A. 10), cert. granted Oct. 9, 1944; *contra Hogan* v. *Com'r,* 141 F. (2d) 92 (C.C.A. 5), cert. den. Oct. 9, 1944.

Appellate jurisdiction: May the taxpayer and the Commissioner designate a circuit court to hear an appeal from the Tax Court by stipulation made after the time to appeal has expired? *Industrial Addition Assn.* v. *Com'r,* 141 F. (2d) 636 (C.C.A. 6), cert. granted Oct. 9, 1944.

Transfer in contemplation of death: May estate tax be imposed upon gifts of an incompetent's property authorized by the local courts during her lifetime? *City Bank Farmers Trust Co.* v. *McGowan,* 142 F. (2d) 599 (C.C.A. 2), cert. granted Oct. 9, 1944.

Transfer conditioned upon death: Is a pre-1931 trust subject to estate tax where the grantor retained not only a life estate, but a contingent power to appoint the remainder by will? *Fidelity-Philadelphia Trust Co.* v. *Rothensies,* 142 F. (2d) 838 (C.C.A. 3), cert. granted Oct. 9, 1944.

Gift tax exemption: Is an infant's interest in a trust a "future interest" where the trustees have the power either to accumulate the income or to use it for his support?

Fondren v. *Com'r*, 141 F. (2d) 419 (C.C.A. 5), cert. granted Oct. 9, 1944.

Gift tax upon antenuptial transfer: Does an antenuptial transfer constitute a taxable gift, even where made in consideration for the wife's relinquishment of dower rights? *Fahs* v. *Merrill*, 142 F. (2nd) 651 (C.C.A. 5.), cert. granted Oct. 9, 1944.

Limitation period for refund claim: Where an extension of time for filing a return has been granted, and where an estimated tax is meanwhile paid to prevent the running of penalties and interest, is the earlier date considered to be the date of payment for the purpose of a refund claim? *Rosenman* v. *U. S.*, 53 F. Supp. 722 (Ct. Cl.), cert. granted Oct. 9, 1944.

Purchase v. compensation: Is an employee's bargain purchase of stock pursuant to an option taxable compensation? *Smith* v. *Com'r*, 142 F. (2d) 818 (C.C.A. 9), cert. granted Oct. 16, 1944.

Basis for earnings or profits: Is a statutory amendment constitutional where it retroactively affects the stockholder's income on liquidation by reducing the corporation's basis for gain or loss and thereby increasing its earnings and profits? *Wheeler* v. *Com'r*, 143 F. (2d) 162 (C.C.A. 9), cert. granted October 16, 1944.

Excess Profits Tax—Abnormal Profits Cycle

There are several types of "abnormality" which may justify a constructive base period income for excess profits tax purposes. One type specified in the statute is a base period depression by reason of the taxpayer's industry having "a profits cycle differing materially in length and amplitude from the general business cycle." The regulations cite the construction industry as an example, where in the past three decades a building cycle has generally embraced two or more business cycles.

The Bureau has recently issued a list of 34 "industrial groups" which are "unlikely" to qualify under this provision. These groups include agriculture, metal mining, bakery and confectionery, canned food, sugar, soft drinks, liquor, tobacco, silk and rayon goods, carpets and floor coverings, knitted materials and products, rubber and rubber goods, paper and pulp, printing and publishing, petroleum refining, fertilizer, stone, clay, and glass manufacturing, motor vehicles and accessories, agricultural machinery and equipment, factory machinery, electrical machinery and equipment, office equipment, aircraft manufacturing, radio and parts manufacturing, shipbuilding and repairing, electric light and power, radio broadcasting, telephone and telegraph, water transportation, retail trade, motion picture theatres and producers, and banks, loan companies, and trust companies. The ruling recognizes that there may be exceptional industries included in these groups, and states that the Bureau will be receptive to statistical and other data. No mention is made of specific industries which do qualify, and the ruling cautions against any implication that industries not included in the list will qualify. Mim. 5747 (Sept. 23. 1944.)

Law Lists

The publishers of the law lists and legal directories listed below have received from the Special Committee on Law Lists of the American Bar Association, as to the list of lawyers' names in their 1945 editions, a Certificate of Compliance with the Rules and Standards as to Law Lists. All applications filed by law list publishers for 1945 certificates have not yet been finally considered by the Committee. Announcement will be made in the JOURNAL as to any subsequent certificate issued by the Committee.

Commercial Law Lists

A. C. A. List (Oct., 1944-1945 edition)
Associated Commercial Attorneys List
92 Liberty Street
New York City 6

American Lawyers Quarterly
The American Lawyers Company
1712 N. B. C. Building
Cleveland 14, Ohio

Attorneys List
U. S. Fidelity & Guaranty Company
Redwood & Calvert Streets
Baltimore 3, Maryland

B. A. Law List
The B. A. Law List Company
161 W. Wisconsin Avenue
Milwaukee 3, Wisconsin

Clearing House Quarterly
Attorneys National Clearing House Company
Fawkes Building
Minneapolis 3, Minnesota

The Columbia List
The Columbia Directory Company
320 Broadway
New York City 7

The Commercial Bar
The Commercial Bar, Inc.
521 Fifth Avenue
New York City 17

C-R-C Attorney Directory
The C-R-C Law List Company, Inc.
50 Church Street
New York City 7

Forwarders List of Attorneys
Forwarders List Company
38 South Dearborn Street
Chicago 3, Illinois

The General Bar
The General Bar, Inc.
36 West 44th Street
New York City 18

International Lawyers Law List
International Lawyers Company, Inc.
33 West 42nd Street
New York City 18

The National List
The National List, Inc.
75 West Street
New York City 6

Rand McNally List of Bank Recommended Attorneys
Rand McNally & Company
536 South Clark Street
Chicago 5, Illinois

The United Law List
The United Law List Company, Inc.
280 Broadway
New York City 7

Wright-Holmes Law List
Wright-Holmes Corporation
225 West 34th Street
New York City 1

Zone Law List
Zone Law List Publishing Company, Inc.
403 Louderman Building
St. Louis 1, Missouri

Directory of Commercial Attorneys

American Lawyers Annual
The American Lawyers Annual Co.
1715 N. B. C. Building
Cleveland 14, Ohio

General Law Lists

American Bank Attorneys
American Bank Attorneys
18 Brattle Street
Cambridge 38, Massachusetts

The American Bar
The James C. Fifield Company
1645 Hennepin Avenue
Minneapolis 3, Minnesota

The Bar Register
The Bar Register Company, Inc.
One Prospect Street
Summit 1, New Jersey

Campbell's List
Campbell-Broughton, Inc.
140 Nassau Street
New York City 7

Corporation Lawyers Directory
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

The Lawyers Directory
The Lawyers Directory, Inc.
18 East Fourth Street
Cincinnati 2, Ohio

The Lawyers List
Law List Publishing Company
111 Fifth Avenue
New York City 3

Russell Law List
527 Fifth Avenue
New York City 7

Sullivan's Law Directory
Sullivan's Law Directory
33 South Market Street
Chicago 6, Illinois

General Legal Directory

Martindale-Hubbell Law Directory
Martindale-Hubbell, Inc.
1 Propsect Street
Summit 1, New Jersey

Insurance Law Lists

Best's Recommended Insurance Attorneys
Alfred M. Best Company, Inc.
75 Fulton Street
New York City 7

Hine's Insurance Counsel
Hine's Legal Directory, Inc.
38 South Dearborn Street
Chicago 3, Illinois

The Insurance Bar
The Bar List Publishing Co.
State Bank Building
Evanston, Illinois

Interstate Commerce Commission Practitioners

National Guide Attorneys and Practitioners
The Traffic Service Corporation
418 South Market Street
Chicago 7, Illinois

Probate Law List

Recommended Probate Counsel
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

State Legal Directories

The following state legal directories published by
Legal Directories Publishing Company
310 Reisch Building
Springfield, Illinois

Illinois Legal Directory
Indiana Legal Directory
Iowa Legal Directory
Kansas Legal Directory
Missouri Legal Directory
Ohio Legal Directory
Pacific Coast Directory for the States of California, Oregon, Washington and Nevada
Pennsylvania Legal Directory
Texas Legal Directory
Wisconsin Legal Directory

Foreign Law Lists

Canada Legal Directory
Canada Bonded Attorney & Legal Directory, Ltd.
57 Bloor Street, West
Toronto 5, Ontario, Canada

Canadian Credit Men's Commercial Law and Legal Directory
Canadian Credit Men's Trust Association, Ltd.
456 Main Street
Winnipeg, Manitoba, Canada

Canadian Law List
Canadian Law List Publishing Co.
24 Adelaide Street, East
Toronto, Ontario, Canada

The International Law List
L. Corper-Mordaunt & Company
104 High Holborn
London, W.C.1, England

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The Special Committee on Law Lists of the American Bar Association has issued a Letter of Intention to the following publisher for the law list specified.

El Registro de Abogados de los Estados Unidos de America
Inter-American Legal Directory Co.
225 West 34th Street
New York City 1

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(Letter expires December 31, 1944)

In issuing a Letter of Intention, the Committee does not certify that a law list proposed to be issued will actually be issued or that it will comply with the Rules and Standards as to Law Lists. The Letter of Intention is issued solely upon the representations made by the publisher, as to the manner in which the list will be published, maintained and circulated.

Prior to issuing such a law list the publisher or promoter is required to file with the Committee a statement representing the manner in which it proposes to publish, maintain and circulate said list. If the representations in such statement indicate that said list will, when issued, meet the requirements of the Rules and Standards as to Law Lists, the Committee issues a Letter of Intention to the publisher. If the publisher so publishes the first complete edition of said list on or before December 31st of the year following the issuance of the Letter of Intention, the Committee then issues its formal Certificate of Compliance. If the publisher does not publish said list on or before the proposed issuance date, the Committee may either extend the time limit within which the publication may be published or may revoke the Letter of Intention.

Junior Bar Notes

by T. Julian Skinner, Jr., SECRETARY, JUNIOR BAR CONFERENCE

Charles S. Rhyne of Washington, D. C., the new Chairman of the Junior Bar Conference of the American Bar Association, succeeded in appointing a state chairman for the Conference in each state and territory within the first month of his term. It is the function of each to coordinate the work of the Conference in the areas falling within their respective jurisdictions. It has been found desirable to appoint two individuals to serve as co-chairmen in certain areas. The following are the state chairmen who have been appointed:

Alabama	—John W. Vardaman, Anniston
Alaska	—Mrs. Dorothy D. Tyner, Juneau
Arizona	—Francis J. Donofrio, Phoenix
Arkansas	—W. J. Jernigan, Jr., Little Rock
California	—Wixon Stevens, Los Angeles, and James E. Burns, San Francisco
Colorado	—Trueman A. Stockton, Jr., Denver
Connecticut	—Grant N. Nickerson, New Haven
Delaware	—Vincent A. Theisen, Wilmington
District of Columbia	—Nathan M. Lubar, Washington
Florida	—Selden F. Waldo, Gainsville
Georgia	—G. Arthur Howell, Jr., Atlanta
Hawaii	—Thomas M. Waddoups, Honolulu
Idaho	—Claude V. Marcus, Boise
Illinois	—Donald V. Dobbins, Champaign, and John M. O'Connor, Jr., Chicago
Indiana	—Walter B. Keaton, Rushville
Iowa	—Ben Galer, Mount Pleasant
Kansas	—Richard E. Kirkpatrick, Wichita
Kentucky	—Bertram C. Van Arsdale, Louisville
Louisiana	—P. Albert Blenvenu, New Orleans
Maine	—John D. Leddy, Portland
Maryland	—K. Thomas Everngam, Denton
Massachusetts	—Harris A. Reynolds, Boston
Michigan	—Wayne E. Babler, Detroit
Minnesota	—George P. Hoke, Minneapolis
Mississippi	—Paul H. Farr, Prentiss
Missouri	—Hugo M. Walther, St. Louis
Montana	—James H. Kilbourne, Billings
Nebraska	—Leonard R. Dunker, Lincoln
Nevada	—Alan Bible, Carson City
New Hampshire	—James A. Manning, Jr., Concord
New Jersey	—E. Herbert Kiefer, Clinton
New Mexico	—Harry L. Bigbee, Santa Fe
New York	—Thomas T. Heney, New York, and J. Wesley Vibbard, Schoharie
North Carolina	—Kerr Craige Ramsay, Salisbury
North Dakota	—Thomas L. Degnan, Grand Forks
Ohio	—Robert A. Kelb, Toledo
Oklahoma	—John S. Carlson, Tulsa
Oregon	—Robert A. Leedy, Portland
Pennsylvania	—Robert A. Detweiler, Philadelphia, and Harold R. Prowell, Harrisburg
Puerto Rico	—Philip F. Herrick, San Juan
Rhode Island	—James E. Flannery, Providence
South Carolina	—Ray W. Humphrey, Columbia
South Dakota	—R. C. Riter, Pierre
Tennessee	—W. Stuart McCloy, Memphis
Texas	—Armond G. Schwartz, Hallettsville
Utah	—Zar E. Hayes, Salt Lake City
Vermont	—Louis Lisman, Burlington
Virginia	—Mosby G. Perrow, Jr., Lynchburg
Washington	—Donald Dirstine, Spokane, and Wayne C. Booth, Seattle
West Virginia	—Harold H. Neff, Charleston
Wisconsin	—George E. Frederick, Milwaukee
Wyoming	—E. Byron Hirst, Cheyenne

The Conference will continue the work of its committees on War Readjustment, Membership, Traffic Court Improvement, Procedural Reform Studies, Restatement of the Law, Relations with Law Students, Aid of the Small Litigant, Inter-American Bar Association, and Cooperation with Junior Bar Groups. The personnel of these committees has been completely selected in most instances and will be announced in a later issue.

The Public Information Program, a project originated by the Conference but conducted by the American Bar Association as a whole during the last two years, has been returned to the Conference. That project consists of the sponsoring of activities which are calculated to inform the public on matters of a legal or quasi-legal nature. A committee on the matter is being appointed.

Certain members of the Traffic Court Committee participated in the meeting of the National Safety Congress which was held in Chicago, Illinois, during the early part of October. The committee is continuing to arrange for traffic court conferences to be held in various states in the same manner as such conferences were conducted in the past.

The Junior Bar Section of the Hennepin County Bar Association at its recent meeting in Minneapolis, Minnesota, elected Rosemary M. Moskalik, Minneapolis, as Chairman, Frederick W. Thomas, Minneapolis, as Vice Chairman, and James H. Binger, Minneapolis, as Secretary. Leon C. Levy is the new President of the Houston (Texas) Junior Bar Association, with Nelson Munger as Vice President and Reagan Cartwright as Secretary-Treasurer.

Walter B. Keaton, Rushville, is the new Chairman of the Young Lawyers' Section of the Indiana State Bar Association. John E. Early, Evansville, and John W. Houghton, Indianapolis, are the Vice Chairman and Secretary, respectively.

A group including Milton Greenfield, Jr., of St. Louis, Chairman of the Junior Bar Section of the Missouri Bar Association, and Hugo M. Walther, St. Louis, acting as Temporary Chairman, is interested in the creation of a Junior Bar Section in the integrated Missouri Bar.

The Board of Governors of the Washington State Bar Association recently adopted a resolution establishing a Younger Members Committee composed of representatives from congressional districts in the state. This committee is now in the process of becoming organized.

The officers of the Barristers' Club of San Francisco, California, are Scott Lambert, President, Hamilton Barnett, Vice President, and James E. Burns, Secretary. The officers and George Barry constitute the directors of the group.

The new Committee on Junior Bar Activities of the Oregon State Bar consists of John Gordon Gearin, Charles B. Dolph, Robert A. Leedy, Lofton L. Tatum, and Thomas J. White, all of Portland, and Grace K. Rementeria, Canyon City.

As this issue goes to press, we are informed that the Traffic Court Committee has scheduled traffic court conferences in South Dakota, Wisconsin, Oklahoma, New Hampshire, Maryland, Illinois, North Dakota, Kentucky, Mississippi, Louisiana, Arkansas, Minnesota, Nebraska, Vermont, and Michigan. Others will be scheduled later. In the past conferences of this type have been considered of definite aid to the bar in its efforts to improve the administration of justice in traffic courts and other courts of inferior jurisdiction.

Report of the Judicial Conference

by Edson R. Sunderland
LAW SCHOOL, UNIVERSITY OF MICHIGAN

The Judicial Conference of Senior Circuit Judges met in Washington on September 26, 1944, for a four days' session.

Reviewing the work of the federal courts for the fiscal year ending June 30, 1944, the Director of the Administrative Office showed in his annual report to the Conference many striking effects of the war. The number of OPA civil cases commenced increased 4477, or 200%, over 1943, while condemnation cases decreased 2227, or 45%. Bankruptcy cases fell off 44% under the stimulus of war prosperity. Criminal prosecutions brought by OPA increased 2254, or 97%, over the preceding year, but selective service prosecutions showed a decline of 1183, or 15%. The number of persons naturalized increased 93,365, which was 41% above the preceding year. The average interval between the commencement and the final disposition of civil cases where a trial was held was 10.5 months, a slightly shorter interval than in the preceding year. A new statistical table was added to the report regarding the lengths of trials. It showed, among other things, that 67% of civil court trials were completed in one day or less, while only 31% of civil jury trials were completed in that length of time. On the criminal docket 94% of the court trials and 78% of the jury trials were completed in one day or less.

Of the pending bills for increasing the personnel of the federal bench, some were approved and some disapproved. The Conference favored an additional circuit judge in the Third Circuit but not in the Seventh; it favored additional district judges in the Eastern District of Pennsylvania, the District of Delaware, the District of New Jersey, and the Southern District of New York; but it disapproved additional judges in the District of North Dakota, the District of Minnesota and the Eastern District of Washington. It recommended legislation permitting a district judge to be designated to sit in the Circuit Court of Appeals in circuits other than that of his district.

The probation system was shown to be working rather badly on account of difficulty in obtaining properly qualified officers. This was thought to be in part due to the low rate of compensation.

The Conference voted to continue its efforts to obtain legislation authorizing a maximum allotment of $6,500 to each circuit and district judge ($7,500 in case of a senior circuit judge) for secretaries and law clerks.

To prevent the abandonment of many referees' offices by reason of the temporary decrease in bankruptcy business, it was recommended that part-time referees be authorized to act also as United States Commissioners.

As a means of freeing the clerks' offices from the accumulation of old and useless files in bankruptcy, the Conference approved a plan for destroying files in non-asset cases and in asset cases not involving real estate after ten years, destroying proofs of claim and cancelled checks in asset cases involving real estate after ten years; and destroying the remainder of the files in twenty years, with provision for uniform claims registers and dockets for the permanent preservation of such information as ought to be kept.

Standards of qualifications for court reporters were adopted, and a complete scale of fees for the original transcript and for the first and additional copies was adopted for each judicial district, varying from 25c to 40c a folio in the various states for the original, and averaging about 15c a folio for each copy. These rates are to be adjusted in each district from time to time with a view to reducing the cost of litigation as far as possible while securing to reporters a fair compensation.

A plan for making the Conference more effective by providing for representation of district judges was presented, and the Conference directed that it be submitted to each circuit and district judge for an expression of their views. Under the proposed plan all matters affecting district courts or district judges would be submitted to a committee of the Conference on which the district judges would have equal representation, and the committee would undertake to ascertain the views of the district judges of the United States through circuit legislative committees which would be organized in each circuit.

The Conference recommended that the district courts make fuller use of appropriations for psychiatric examinations of criminal defendants where there is reason to believe that the accused is of unsound mind. For this purpose arrangements should be made with local hospitals and other institutions and agencies for observation and examination.

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HOUSE OF DELEGATES

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sidered if and when the necessity for such legislation arises. In our humble and perhaps ineffective way, we suggest to this House at least some of the principles which should be commended for consideration if and when that necessity arises.

"Your Committee has also given consideration to the provisions of a bill now before Congress, the Wagner-Murray Bill, which deals with amendments and extensions of the present social security, unemployment, old age retirement, and similar Acts. In discussing them I don't like the use of the term Social Security Act. If we think of it merely as a matter of insurance to be enacted into law from that standpoint and to be administered from that standpoint—if we think of it as simply something which we today from what we have earned, postpone the spending, so that in time of old age or disability we shall have that saving so that we may be at least in part self-supporting, much of the objections which many of us have had with regard to these projects may be removed.

"The proposed bill, however, overlooks, it seems to us, several essential elements. If we think of these things as insurance, the present withholding of present enjoyments so that future security may in a measure be assured, we must think of what the present income is and what the present necessities are of spending that income, whether it be individual or national. The Wagner-Murray Bill, by specific terms, would require the payment of six cents of every payroll dollar by the employee, the contribution of six cents of such dollar by every employer, and the probable contribution from general taxation by the Federal Government of another six cents, so that there is in contemplation expressly so far as the first twelve cents is concerned and impliedly, and according to the authors of the bill of necessity, another six cents, of each dollar of income of the nation by reason of any kind of employment. Of course it not only enlarges the base but it proposes to increase greatly the benefits."

Chairman Maguire then offered the following resolution as recommended by his Committee:

RESOLVED, That it is the sense of the House of Delegates of the American Bar Association that the observance of the following principles will afford reasonable assurance of the necessary production of war materials, and the elimination of strikes, slowdowns, and other labor stoppages which tend to interrupt such production.

(a) The creation of a board or agency having authority to hear and finally determine all questions relating to wages, hours, and other labor conditions.

(b) That such decisions be final and not advisory and be made binding upon both management and labor, but may be reviewed by appeal as hereinafter provided.

(c) That the board be made completely free from effective pressures of management, labor or the Executive.

(d) That procedures be established for adequate, fair and speedy hearing and determination in accordance with the standards of administrative procedure heretofore recommended by the Association accompanied by the right of appeal as therein prescribed.

(e) That all strikes, slowdowns, and other stoppages be prohibited both prior and subsequent to final determination by the board.

(f) That sanctions be provided to compel observance of and obedience by both management and labor, to such final determination.

(g) That no legislation enacted on this subject shall remain in effect after the termination of actual hostilities as the same may be declared by Executive Order or by Congressional resolution.

Section of Insurance Law Reports

Consideration of the above resolution was laid aside, as the House had voted to make the report of the Section of Insurance Law a special order for four o'clock. John Kirkland Clark, chairman of the House Committee to consider the Section's recommendations, reported that the Committee did not "undertake to advise the House" on the question as to "whether the House properly should regard itself as having jurisdiction to consider the question of whether insurance should be governed by acts of the Congress or whether it should continue to be supervised by the states through their legislatures and administrative officers."

Chairman Frank E. Spain, of Alabama, offered the following resolution as recommended by the Section, with some changes worked out by the House Committee:

WHEREAS, on June 5, 1944, the Supreme Court of the United States decided the case of *United States* v. *Southeastern Underwriters Association*, 88 L. ed. 1082, and therein overruled the holding in *Paul* v. *Virginia*, 75 U. S. 168, decided more than three quarters of a century ago, and all of the cases that followed it, and held that the business of insurance was commerce within the commerce clause of the Constitution of the United States; and

The decision subjects the business of insurance (1) to diverse existing federal acts in many instances in direct conflict with state statutes, and (2) to the possibility of being subject to such further federal regulatory acts as may be enacted by Congress, and has created doubt and uncertainty in the legal profession, in the industry and in the insuring public; and

The business of insurance has been continuously regulated by the states since the early part of the nineteenth century and there has been developed by the states a comprehensive and efficiently operating system of state supervision; and

It is to the national welfare that centralization of government be not further extended nor that states rights be further diminished; that regulation of insurance be continued by the states and that such local self-government and regulation not be superceded by federal regulation; and

On August 30, 1944, the National Association of Insurance Commissioners, an association of all elected and appointed state officers charged with the administration of the insurance laws of their respective states, through its executive committee, approved a report of its sub-committee on Federal Legislation, which devoted many months to the consideration of the problems presented by the decision in *United States* v. *South-Eastern Underwriters* and which, after numerous hearings and conferences, recommended the adoption by the Congress of the United States of certain legislation and the amendment of certain existing federal statutes to the end that supervision of insurance be preserved to the respective states; and

Failure by Congress, in the event

the pending petition for rehearing in *United States* v. *Southeastern Underwriters* is denied, promptly to enact legislation amending certain existing statutes would tend to upset, endanger and undermine the supervision of insurance by the states and would in a measure subject insurance to federal regulation, all of which would be inimical to the national welfare;

RESOLVED, That the American Bar Association records itself as favoring in the national welfare the continuation of state supervision of insurance, and as opposed to federal control or supervision of insurance; that towards the achievement of these ends, it endorses in principle the following recommendations of the National Association of Insurance Commissioners embodied in its report of August 30, 1944, to-wit:

(1) The enactment by Congress of affirmative legislation under the commerce clause of the Constitution, by which it formulates its own policy and establishes its own rule to the effect that the regulation and taxation of the insurance business shall continue in the several states.

(2) An appropriate amendment to the Federal Trade Commission Act eliminating the insurance business from the scope of that Act.

(3) An appropriate amendment eliminating the insurance business from the scope of the Robinson-Patman Act.

(4) An appropriate amendment to the Sherman and Clayton Acts excluding from the prohibitions thereof all reasonable cooperative procedures necessary and incidental to the establishment of statistical rate bases, rates, coverages and related matters.

FURTHER RESOLVED, That the Section of Insurance Law of the Association be authorized to give publicity to the adoption of this resolution.

As to (1) of its recommendations, the Section appended a footnote which stated that "This recommendation is understood by the American Bar Association to mean merely that Congress is to be urged to enact legislation evidencing its affirmative intent not to preempt or enter the field of insurance regulation."

Harry Cole Bates, of New York, seconded the motion to adopt the resolution.

Former President George Maurice Morris, of the District of Columbia, arose to make a point of order against the Section's resolution. He prefaced his point of order by declaring that "No one who is accustomed to the ordinary American procedure in determining public policy could help but be shocked by the decision in the *South-Eastern Underwriters* case. By no enactment of the legislative representatives of the people and even, apparently, by no full majority of the Supreme Court, we suddenly found that decisions and public policy which we all understood to be pretty clear, were removed from the category in which they had heretofore been placed.

"It was a profoundly disrupting decision respecting not only the matters of insurance but many other questions of public policy. The sense of shock continues."

Mr. Morris' point of order was that the Section's report did not comply with the House Rule, adopted on September 11 in a more definitive form, to require that when specific legislation is to be proposed or opposed, or a specific amendment of a law or bill is sought, a copy of the bill or amendment must accompany the recommendation and be placed before the House. The rule in question, incorporated as an amendment to the By-Laws, was printed in the November JOURNAL at page 644.

The Point of Order Is Partly Sustained

Chairman Crump at first stated that he was "inclined to the opinion that the point of order is not well taken." Mr. Morris appealed from the ruling of the Chair, and argued in support of his appeal. It was evident that near the end of a heavily calendared and hard-working session, an important issue as to House Rules and procedures had arisen, which would considerably affect the future action of the House on many matters.

After hearing Mr. Morris, Chairman Crump sustained his point of order as to Items 2, 3 and 4 of the Section's resolution above set out, thereby requiring that the debate proceed upon the resolution without those items.

Harry Cole Bates, of New York, appealed from that ruling. He said that "while I do not cope with Mr. Morris as a parliamentarian or expert in the policy and practice of this House," he urged that the House ought not to let so restrictive a view prevail. He thought that the resolutions stated the principle and scope of the desirable legislation with sufficient definiteness, and that the Association is entitled to approve and urge clearly stated principles, without putting every detail in the form of an exact bill or precise amendment of existing law. To hold otherwise "would render this House impotent to act in a matter now pending before the Congress," he said. "We go on record now, or not at all."

Willis Smith, of North Carolina, supported Mr. Bates' appeal. He said that he thought Mr. Morris was in error, because the Rule relates expressly, and only to the consideration of "specific" legislation, and does not bar the House from approving and urging "appropriate" legislation to effectuate clearly stated principles and objectives. Items 2, 3 and 4 of the Section's resolutions seemed to him to do just that. No one could be in doubt as to what the resolutions propose, as to the elimination of the insurance business from the scope of the Sherman Anti-Trust Act and the other statutes specified. The House is entitled to favor and urge "appropriate" legislation to that end, without itself drawing a bill or amendment or favoring one particular form of words, as against another, to accomplish it.

As Chairman Crump in effect had sustained Mr. Morris' point of order, Mr. Morris withdrew his appeal. On submitting to the House the question whether the ruling of the Chair should be sustained as against Mr. Bates' appeal, Chairman Crump ruled that the vote of the House sustained his interpretation.

Resolution Adopted After the Eliminations

Chairman Spain then made a statement in support of the Section's recommendations, and explained the effects produced by the recent decision of the Supreme Court. "This is the first time this Section has ever asked the House to put the Associa-

tion on record on such a matter of policy as to insurance law," he said.

In view of the Chair's elimination of Items 2, 3 and 4 from the resolution, Nathan P. Avery, of Massachusetts, arose to ask Mr. Spain: "I think we are all very sympathetic with the contention your Committee makes, but why doesn't your first resolution give you about everything that you want when you appear before the Committee of the Senate, where I think perhaps the next hearing will be?"

Chairman Spain did not see it that way. "The answer to that," he said, "is that the immediate chaos of the decision itself is that governmental agencies are now asserting the right to regulate insurance, and one of the agencies which mostly palpably has that right would be the Federal Trade Commission."

Nevertheless the eliminations stood, and the resolutions were then adopted by the House in that form. "I hope your Section will not be reticent in the future in bringing matters before us," declared Chairman Crump to Mr. Spain.

Consideration of the recommendations of the Committee on Labor, Employment and Social Security was laid over until the Thursday session.

New Uniform Acts Are Approved

President W. E. Stanley, of the National Conference of Commissioners on Uniform State Laws, filed the report of the work of that body, and moved the approval of two new Uniform Acts which had been drafted and recommended by the Conference and examined and approved by the Board of Governors. Copies were on the desks of members of the House.

The motion that the Association approve the proposed Uniform Powers of Foreign Representatives Act and the Uniform Act Relating to the Reverter of Realty was adopted.

In the absence of Chairman John G. Buchanan, of Pittsburgh, who had been detained by a landslide while on his way to Chicago from Mexico City, the recommendations of the Committee on Jurisprudence and Law Reform were submitted by Glenn E. Coulter, of Michigan, as follows:

Resolution No. 1

(1) RESOLVED, That this Association recommend to the Advisory Committees on Rules of Civil and Criminal Procedure of the Supreme Court of the United States a study of the Model Code of Evidence adopted and promulgated by the American Law Institute, with a view to determining how far its provisions should be adopted as rules of procedure for the district courts of the United States.

Resolution No. 2

(2) RESOLVED, That this Association approve in principle the Bill H. R. 4290, relative to the appointment and compensation for counsel for impoverished defendants in certain criminal cases in the United States district courts; and that the Secretary of the Association certify its approval of the bill in principle to the Chairman of the Committee on the Judiciary of the House of Representatives.

These were adopted by the House without opposition.

Resolution Against H. R. 1747 Is Adopted

Next considered was the recommendation of the Section of Corporation, Banking and Mercantile Law, offered by its chairman, W. Leslie Miller, of Michigan, as follows:

RESOLVED, That S. 215, passed by the Senate May 20, 1943, and H.R. 1747, an identical bill, presently before the Judiciary Committee of the House of Representatives, should not be adopted by Congress.

Henry I. Quinn, of the District of Columbia, chairman of the House Committee, stated its inquiry into the subject-matter and its recommendation in favor of the resolution. Chairman Miller of the Section stated that an identic resolution was recommended also by the Section of Real Property Law, as the bill covers both personal and real property.

It was developed that Chairman Sumners of the Committee on the Judiciary, before which the bill is pending in the national House of Representatives, had asked for the views of the Association as to the bill, which had been passed by the Senate. Study of the bill by the Sections resulted in the joint recommendation against it. The resolution was adopted by the House, without opposition.

Report by the Section of Legal Education

Chairman Albert J. Harno, of the Section of Legal Education, gave its report and recommendations, on which Stuart B. Campbell, of Virginia, as chairman of the House Committee, reported favorably.

Dean Harno reported that Columbus University School of Law and Northeastern University School of Law, previously approved provisionally by the Bar Association, have been inspected and have been found to meet the requirements for full approval. He moved the following, which was adopted:

RESOLVED, That Columbus University, School of Law, of Washington, D. C., and Northeastern University School of Law, of Boston, Massachusetts, be approved as fully meeting the standards of legal education of the American Bar Association.

The Section presented also the following statement and Resolution:

"The American Bar Association has learned of relaxations in some states of the established standards of admission to the Bar for men in the Armed Forces, and it anticipates movements aimed at further relaxations for returning veterans.

"The American Bar Association is deeply conscious of the fact that the members of the legal profession, along with all members of the American public, owe a great debt of gratitude to the men and women in the Armed Forces. It is aware that some of these individuals intend to prepare themselves for the practice of law. As to those who expect to become lawyers, it recognizes its responsibility and the responsibility of all members of the legal profession to do everything within their power to assist them in securing a legal education.

"The American Bar Association is firmly of the opinion, however, that it is a disservice to returning veterans to provide them with short-

cuts for admission to the Bar, since such shortcuts would tend to make possible and encourage admission to the Bar without proper preparation. It is convinced also that this is a subject in which the public is concerned and that the lowering of the standards of admission to the Bar is against the public interest, which requires that only qualified persons be admitted to the Bar."

Admission Standards Should Be Kept Up

RESOLVED, That the Ameican Bar Association is opposed to movements that would relax or tend to relax standards for admission to the Bar and that it reaffirms its endorsement of the established standards of the Association which specify, among other things, that all applicants should have had at least two years of college work, or its equivalent, as a condition to admission to law study; that they have been graduated from an approved law school offering a three-year course of full-time study or a four-year course of part-time study; and that they pass a Bar examination.

RESOLVED FURTHER, That the American Bar Association urges the local and state bar associations, and all agencies which have power to determine admission requirements for the Bar, in those states that have not yet met the minimum requirements of this Association, that they establish these requirements in their respective states; and that these several agencies in all of the states resist every movement aimed to relax the standards of admission to the Bar.

The foregoing statement of policy and resolution were adopted by the House.

Better Pre-Legal Training Is Advocated

With verbal changes suggested by the House Committee and accepted by the Section, the House adopted also the following:

WHEREAS, Serious deficiencies in needed knowledge and training of many of the students entering law schools have impressed themselves on law school authorities; and

WHEREAS, Attention has been focused on this matter by a comprehensive report on pre-legal education submitted to the Section of Legal Education and Admissions to the Bar; and

WHEREAS, The Association of American Colleges has heretofore requested the law schools to make recommendations to overcome this unsatisfactory condition.

BE IT RESOLVED, That the Council of the Section of Legal Education and Admissions to the Bar be, and it hereby is authorized, to appoint a committee to confer with representatives of the Association of American Colleges for the purpose of discussing and recommending ways and means of improving the training and equipment of college students who are looking forward to the study of law.

Education and Admissions in Post-War Period

In presenting the Section's Report, Dean Harno said, in part:

"The Council of the Section has devoted itself in this war period, with all the determination and energy it could bring to bear, to the task of resisting all movements aimed at relaxations in standards of admission to the Bar. In legal education it has had to cope with a multitude of problems raised by a nearly catastrophic fall in law school enrollments. I cannot describe this situation more graphically than by stating that between 1939 and 1943 the decrease in these enrollments was 83 per cent.

"I now report to you that we have held the line. All movements toward relaxations in admission standards have ceased at least for the time being and there have been no deflections in legal education. The law schools have walked near the brink of disaster but they have not faltered in complying with the spirit and the substance of the standards set by this Association.

"We are now fast approaching the end of the period in the life of our Association, and our attention is already directed toward a new one about to begin. The problems of the war still absorb our interests, but more and more as each day passes our attention is turning to those of the post-war period. We must anticipate that we shall soon be confronted with the task of reorienting thousands of law students and lawyers now in the Armed Forces to the routine of legal thinking and practice. That must soon become a subject of major concern, not only for the Section of Legal Education, but for the whole of our Association. The Council of the Section has been at work on this task for some time and has stimulated and assisted the organized Bar in the various states in setting up refresher courses for lawyer-veterans and machinery geared to reorienting them and placing them in the practice of law as soon as possible on their return.

No Relaxation in Standards of Admission

"Still another problem is perhaps even more crucial. In the shifting scene before us, the Council of the Section anticipates that on the return of the veterans we shall again be confronted with movements directed toward relaxations in the standards of admission to the Bar. It is the judgment of the Council that these movements must be stopped with firm determination.

For those who seek admission to the Bar, it is a commendable service for us to assist them in their education. But to provide them with short cuts to admission to the Bar is a disservice to them, and not only to them but to the profession and the public. The Section and its Council are prepared to devote themselves to the undertaking of resisting all efforts aimed at relaxing admission standards. Its efforts, however, will be fruitless unless we have your good will and your support. Your active participation is, indeed, essential, through your personal influence with the Bench and the Bar of your respective states. I beg that you now determine to give, and later when you reach your homes, that you will continue to give that support."

The Secretary announced that the balloting by members of the Assembly had elected as Assembly Delegates for a two-year term the following:

Guy Richards Crump, 232 votes
Willis Smith, 225 votes
John Kirkland Clark, 205 votes
Charles M. Hay, 204 votes

The third session of the House was recessed at 5:30 o'clock.

House of Delegates
Fourth Session

At the opening of the final session, the Committee on Labor, Employment and Social Security withdrew, to avoid contest on a controversial point of order, its comprehensive statement of principles for legislation against strikes interfering with war production. After debate, the House urged changes in the draft of proposed Rule 71 (a) of the Federal Rules of Civil Procedure, to govern condemnation cases in the federal courts. The House concurred in the Assembly resolution favoring adherence to the principle that only a majority of the whole Supreme Court should change established precedents on constitutional law. A resolution favoring a constitutional amendment as to the method of ratifying treaties was made a special order of business for the mid-winter meeting of the House.

The fourth and concluding session of the House at the 67th Annual Meeting was convened at 2:05 o'clock Thursday afternoon. Although it had been expected that this would be a short session for the clearing up of minor items of unfinished business, a considerable calendar remained, despite the extra session held on Tuesday. Some members of the House had already left Chicago; others were under the necessity of leaving on afternoon trains.

Repercussions of the ruling by the Chairman of the House at the preceding session were manifest in the discussions among the members as the House reconvened. Chairman Robert F. Maguire, of the Committee on Labor, Employment and Social Security, took the floor. That Committee had compiled and offered a comprehensive and specific statement of the principles which it believed should be embodied in any legislation to curb strikes and stoppages of work interfering with the production of critical supplies for the war.

Chairman Maguire referred to the suggestion that a point of order would be raised against the Committee's recommendation, and sustained, on the ground that it had not been submitted in the form of a definitive bill ready for legislative enactment. "The members of the Committee thoroughly disagree with the point of order", said he, "and wish they could be here to contest it."

As he and other members of the Committee could not remain to "dispute the interesting point", and to "save the time of the House," Chairman Maguire withdrew his Committee's recommendations.

Cooperation of Accountants and Lawyers

For the Committee on Unauthorized Practice of the Law, Chairman David F. Maxwell, of Pennsylvania, reported that the National Conference Group of Accountants and Lawyers, which was authorized by the House at its 1944 mid-winter meeting, had held its first business meeting in Chicago during the present week. He read to the House the following resolutions adopted by the Conference:

WHEREAS, lawyers and certified public accountants are trained professional men, licensed by the several states, and required to bring to their public service qualifications both as to competency and character; and

WHEREAS, the American Bar Association and the American Institute of Accountants have adopted codes of ethics to assure high standards of practice in both professions.

BE IT RESOLVED, in the opinion of the National Conference of Lawyers and Certified Public Accountants,

(1) That the public will be best served if income-tax returns are prepared either by certified public accountants or lawyers.

(2) That it is in the public interest for lawyers to recommend the employment of certified public accountants, and for certified public accountants to recommend the employment of lawyers, in any matter where the services of either would be helpful to the client; and that neither should assume to perform the functions of the other;

(3) That certified public accountants should not prepare legal documents, such as articles of incorporation, corporate by-laws, contracts, deeds, trust agreements, wills, and similar documents, where in connection with such documents questions of accountancy are involved or may result, it is advisable that certified accountants be consulted.

Preparation of Income Tax Returns

Chairman Maxwell called attention to his Committee's recommendation to local and state committees, "to take vigorous and prompt measures to prevent pseudo-tax-experts and other unqualified persons from engaging in the business of preparing income tax returns."

"This recommendation is not pointed at certified public accountants," declared Mr. Maxwell. "On the contrary, your Committee recognizes certified public accountants as professional men qualified by education and training to prepare income tax returns. The report rather is directed against the thousands of unqualified persons who have been engaged in this practice for their personal profit as a business, without any educational background or experience, and whose activities are unquestionably against the public interest."

The report was received and filed.

Recommendations of Section of Municipal Law

For the House Committee on the subject, Chairman William O. Wilson, of Wyoming, reported favorably on two resolutions recommended by the Section of Municipal Law. Dean John D. McCall, as Acting Chairman of the Section, offered its first resolution as to the so-called Boren bill in the Congress. This was adopted, as follows:

WHEREAS, It has always been a well-established principle of American constitutional law that the public finances and the financing of the states and their political subdivisions and instrumentalities are matters of purely state

policy and should not be subjected to restrictions or regulation by any agency of the federal government;

WHEREAS, The Congress of the United States has steadfastly recognized this fundamental principle by refusing to confer on a federal agency power to control such financing;

WHEREAS, Experience has, nonetheless, made it apparent that the Securities Exchange Act of 1934 in its present form, more particularly the power of definition in paragraph 1, subsection (c), Section 15, is subject to interpretations by which state and municipal securities may be subjected to discriminatory treatment, to regulations that would hamper and restrict their markets, and to federal control through Commission regulations; and

WHEREAS, A bill that has been introduced in Congress (H.R. 1502) would eliminate ambiguities in the Securities Exchange Act of 1934, (a) by making certain sections expressly applicable to "exempted securities", (b) by providing, such as is provided in the Securities Act of 1933, that no provision of the Act is applicable to "exempted securities" unless, by the terms of such provision, it is expressly stated to be applicable to them, and (c) by eliminating the power of definition of Section 15 (c) (1);

NOW, THEREFORE, BE IT RESOLVED, That the amendments of the Securities Exchange Act of 1934 proposed in H. R. 1502 are hereby approved and strongly recommended to the Congress of the United States; and

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to the Chairman and each member of the Interstate and Foreign Commerce Committee of the House of Representatives.

The other recommendation of the Section was for amendatory legislation to clarify the Municipal Compositions Act as to the indebtedness and insolvency of municipal corporations. This was adopted, as follows:

RESOLVED, That the House of Delegates of the American Bar Association approves the continuance in effect of the Federal Municipal Compositions Act, with amendments substantially as indicated in the attached draft of the Act, and that the Municipal Law Section be authorized and directed to communicate this approval to the appropriate Committees of the Congress.

During the last hour of the closing session, debate arose as to the recommendation of the Section of Real Property, Probate and Trust Law, of which Robert F. Bingham of Cleveland, Ohio, was the chairman. For the House Committee, Chairman Harry Cole Bates reported the Section resolution favorably. As the chairman of the Section was not present at the time, William H. Dillon, of Illinois, submitted its report.

The Section's resolution related to Proposed Rule 71 (a) of the Federal Rules of Civil Procedure, as to practice and procedure in eminent domain cases in the federal courts. The Real Estate Division of the Section, and later the Section itself, unanimously adopted the resolution, which in its final form read as follows:

RESOLVED, That the American Bar Association recommends to the Advisory Committee on Federal Rules of Civil Procedure that proposed Rule 71 (a) relating to procedure in the federal courts in eminent domain cases be changed to embody the following principles:

1. The proposed Rule should expressly embody the principle that owners of record and those parties shown of record to have an interest in the property by lien or otherwise should be made defendants to the proceedings by name and should provide for service upon the defendants as in other cases.

2. The proposed Rule should embody the principle that diligent search be made to ascertain the residence of parties made defendant before publication is permitted.

3. The proposed Rule should not provide that, in lieu of summons, the attorney for the condemnor may give notice to the defendants of the pendency of the proceeding by mailing notice to them.

4. The proposed Rule should embody the principle that any party may be heard on the question of just compensation until final determination of just compensation.

FURTHER RESOLVED, That before adoption by the Supreme Court of the United States of any redraft of the proposed Rule, time and opportunity should be afforded to the Bar to consider and make recommendations concerning any such redraft.

Adoption of the resolution was moved by John Kirkland Clark and seconded by Harry Cole Bates.

Present Draft of Rule 71(a) Is Criticized

"This resolution is directed to the draft which has come out from the Advisory Committee", said William Clarke Mason, of Pennsylvania. "It is their first draft. It is a very bad draft. The only thing I want to say is: I don't want the passage of this resolution to carry the implication that we think that the rest of it is good. It is so bad that I am quite sure it is going to be completely redrafted, and I had the assurance of some members of the Committee to that effect. But in voting for this resolution, I reserve the right to hereafter make other comments, even though it may not be in this House."

Chairman Crump then called on Major Edgar B. Tolman, of Illinois, a member of the Advisory Committee, to make "a statement of the way in which this matter comes before you."

"The Supreme Court's Advisory Committee on Federal Rules of Civil Procedure", said Major Tolman, "have been instructed by the Supreme Court to examine every case in the Federal Reports which indicates a fault or a difficulty in the administration of the Rules. The staff of that Committee has made that search, and they have presented to you several amendments.

"They have also been instructed to present a rule on condemnation. The rule on condemnation that has been presented evidently needs amendment. The Committee is desirous of amending it.

"We have been instructed to call for amendments to all of these Rules, and we certainly want amendments to the condemnation rule. There is, however, one matter of some confusion.

"There has been proposed legislation for the purpose of expediting the distribution of moneys deposited in court on a condemnation case, where notice of election to take it has been filed, and the government has taken possession of the land on

the deposit of an estimated value. None of that is in these Rules. None of that is within the province of the Rules. It is a method arranged by statute. The province of the Rules is merely to expedite the proceedings.

"One word about expedition in this case: Expedition is not in favor of government; it is in favor of the property owner. The government can always get possession by merely filing an election to take and depositing its estimate in the court. The property owner can't get that money until the proceeding is through. Therefore, anything that speeds up the procedure in condemnation is primarily for the interest of the property owners. Certainly, the Advisory Committee appointed by the Supreme Court to take care of this subject has no desire for any rule that is not absolutely fair to the property holder and the lien holder.

"I can assure you that the amendments that are proposed will be considered. Several have been proposed; the Chicago Bar Association has proposed the draft of an amendment providing for diligent search for the names of the owners. That is what the chairman wants, what you want; that is what the Advisory Committee wants. In every respect, this resolution is entirely satisfactory to us.

"I have just one more thing to say. It may be considered partly aside, but I think you will be glad to know that the Advisory Committee will not report on these Rules or submit them to the court, as formerly expected, on or about the thirtieth of September. I have a letter from the chairman saying that we must extend the time in which amendments can be suggested, because each one of the seven federal circuits is working on specific amendments and specific reports; and they require and ask for another thirty days to complete their reports and recommendations. Many state bar associations are at work on specific amendments, and they have asked for an extension of time. I am sure I can assure you that that time will be extended even beyond the estimate that I have suggested of the last day of October."

Former President Charles A. Beardsley, of California, asked Major Tolman, "Is there anything in your Rules or in the procedure that would make it clear as to whether this proposed Rule, if adopted, would apply to the tens of thousands of pending proceedings that we are trying to dispose of in the federal courts at the present time? Is it the purpose to have a saving clause to protect us so that we will not be put in a more impenetrable maze than we are in at the present time in regard to procedure?"

Major Tolman replied that: "I have no doubt that the provisions that are already in the old Rules—that the Rules shall apply to all pending cases—will be made applicable here. I rather think they are made applicable by that provision."

Mr. Beardsley asked a further question: "Has the Committee given consideration to the question as to why in the various states we should have one procedure in the federal courts for condemnation when the United States is the plaintiff, and another procedure for condemnation in the same courts when the state or an instrumentality of the state is the plaintiff?"

Major Tolman answered, "We have given very serious consideration to it, and our negotiations are far enough along with the District of Columbia and the Tennessee Valley Authority so that I think we will have some hope that the Rule will be uniform in all the federal courts. But we have not yet reached that point."

The Section's resolution was then adopted by the House, without opposition.

The House Adopts Assembly Resolutions

A resolution from the Section of International Law, favoring some further organization of the units of the Bar in all countries, had not been submitted to the House Committee, and was laid on the table, on the motion of Nathan P. Avery, of Massachusetts.

The Secretary reported to the House the action of the Assembly on its Resolution No. 2, by James W. Ryan, of New York. The full text of this resolution was printed at page 641 of the November JOURNAL.

After William Clarke Mason, chairman of the Assembly's Committee on Resolutions, had explained the reasons for that Committee's recommendation which had been overruled by the Assembly, the House concurred in the Assembly action by adopting the resolution.

Another Important Issue Arises

William W. Evans, of New Jersey, as chairman of the House Committee on Draft, reported favorably in the following form the resolution offered by James R. Morford, of Delaware, as to the treaty-making powers of the President and the Senate:

> RESOLVED, That the American Bar Association hereby endorses and approves an amendment to Article II of the Constitution of the United States dealing with the Executive power by striking out the first clause of Section 2, paragraph 2 thereof, reading:
>
> "2. He shall have power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur." and by substituting in lieu thereof the following:
>
> "2. He shall have power to make treaties provided a majority of the members-elect of both the Senate and House of Representatives concur therein." and
>
> BE IT FURTHER RESOLVED, That the American Bar Association here recommends to the Congress that it forthwith propose the foregoing amendment to the several states in pursuance of the provision of Article V of the Constitution.
>
> FURTHER RESOLVED, That the Secretary of the Association forthwith transmit these resolutions to both Houses of Congress, to the President, and to the Secretary of State.

Mr. Morford explained briefly his reasons for offering the resolution, along lines which he amplified in his article at page 605 of the November JOURNAL, where the opposing views on the question were presented. He urged that the present constitutional provision for Senate ratification is a "road-block" against international organization for peace and law.

State Delegate Frank W. Grinnell, of Massachusetts, arose to say that,

"We have hardly a bare majority of the House here now. I am not prepared to vote intelligently on a proposal on behalf of this Association to amend the Constitution of the United States. I move this matter be set over to the mid-winter meeting."

The motion was seconded. Mr. Morford did not oppose it, but urged active study and consideration of the subject meanwhile, and full debate at the mid-winter meeting. The motion to defer was adopted.

Board of Elections Reports

William P. McCracken, Jr., of the District of Columbia, was heartily applauded, as a former Secretary of the Association, when he came forward to render the report of an inconspicuous but important agency of the Association, its Board of Elections. Judge E. T. Fairchild, chairman of that Board from its founding in 1936, was detained by his duties as a member of the Supreme Court of Wisconsin. Laurent K. Varnum, of Michigan, is the third member.

Mr. McCracken reported that the Board of Elections conducted during the Association year 1943-44 the election of State Delegates in twenty-one jurisdictions. In seventeen jurisdictions Delegates were elected for the regular three-year term; in the four others they were elected to fill vacancies; two jurisdictions elected Delegates for the regular three-year term, and also to fill vacancies expiring with the adjournment of the current meeting. Only one jurisdiction nominated two candidates by petition; and one jurisdiction had filed no petition, but wrote in candidates' names on blank ballots. Ballots were mailed to 11,829 members of the Association in good standing, of which 5,059 were returned.

Joseph F. Berry, of Connecticut, offered the following resolution, which was adopted:

> RESOLVED, That the Rules and Calendar Committee be requested to study and report an amendment to Article V of the By-Laws of the Association with respect to the method of introducing resolutions and the content thereof.

The Secretary then reported the list of those nominated by the State Delegates on February 29, with no opposing candidates nominated by petition. As was more fully reported in the October JOURNAL at page 579, these officers were duly elected by the House, on a motion by Ex-Governor Slaton, of Georgia, that the Secretary cast the unanimous ballot of the House.

The fourth and concluding session of the House thereupon voted to adjourn, at 3:10 o'clock, Thursday afternoon.

Charles W. Racine

1897-1944

Charles W. Racine, of Toledo, Ohio, member of the Board of Governors for the Sixth Circuit and Chairman of the Association's Budget Committee for 1944-45, died on November 20, after a few days' illness. His age was forty-six.

He was born in Piqua, Ohio, was graduated from Ohio State University in 1920, was admitted to the practice of law in 1922, and became a member of the American Bar Association in 1929. He served for a time as Dean of Law at Toledo University, and later was Chairman of the Association's Section on Legal Education and Admissions to the Bar. He had been president of the Ohio Bar Association, and was State Delegate from Ohio before his election to the Board of Governors.

Although active and successful in his professional work, Mr. Racine made the time for many activities of a public character, to which he devoted himself with the utmost energy and capacity for organization. He was a leader in political affairs in Ohio, and enjoyed the close friendship of Governor John W. Bricker. Along with his devotion to the work of the American Bar Association, he gave himself also to the interests of Ohio State University, the Red Cross, the Community Chest, the American Legion, and other civic concerns. Lately he had served as a member of the War Labor Board's special panel which heard the labor dispute between unions at the works of the Electric Auto-Lite Company. His wife and one son survive him.

Mr. Racine was a shining exemplar of the lawyer as a good citizen. To every task he undertook and every cause he championed, he brought diligence, enthusiasm, a facility for achieving results, and a recklessness as to his health and strength. Among the lawyers of the country he won and held a host of friends. His going is a great loss to the work of the Association, in which he was plainly destined for still higher honors.

Letters To the Editors

The publication in your October issue of the names of the Committee on Award in the 1944 Ross Essay Contest compels me to say that, as a member of the Committee, I dissented from the award *in toto*. I am quite unwilling that there should be conveyed to the members of the Association any implication either that I favored the winning essay's proposal of a superstate, which is rejected by all responsible statesmen, or that I considered the proposal to have been persuasively set forth and advocated, or that I believed that its exposition would promote the purposes for which the contest was inaugurated.

ROBERT B. TUNSTALL

Richmond, Va.

To the Editors:

Recently, on being solicited, I subscribed for the magazine, *Hygeia*, which, as you know, is published under the auspices of the American Medical Association. I had, of course, seen this magazine many times in the waiting rooms of physicians and elsewhere. But this time the receipt of the literature urging my subscription and the later reading of the magazine as a subscriber led me to think of the value of a similar journal in the field of law. It is in that regard I am writing you. My initial thought in this matter is that it would be a most significant venture for the American Bar Association to sponsor the publication of a popular journal which would do in the field of law what *Hygeia* is doing in the field of medicine. As a teacher of law, I place the educational value first. I would accordingly include articles on government, simple expositions of the Bill of Rights, etc., as well as practical every-day legal problems that the ordinary citizen encounters. I suppose that to some members of the Bar, perhaps to many, the question will arise as to the influence of such a journal, assuming it would have a very wide circulation, on the practice of law. I do not believe anyone can presently speak with confidence in this regard; but it is my opinion that there would be an increased respect for the practice of the law and probably, also, increased consultation of lawyers.

It would be essential to avoid technicality and to procure interesting, readable, simple articles. It would, I suppose, be necessary to pay contributors; and in this connection I should imagine that the interest of law students might be secured. The important matter of reaching sections of the community which never consult lawyers is involved as are the interests of those members of the Bar, who, under normal conditions, do not enjoy substantial financial success.

Perhaps I need not add that I am impelled to bring this matter to the general attention of the Bar by the opinion that, if the enterprise were carried on with high competence, there would be much benefit to the community and the profession.

JEROME HALL

Indiana University
School of Law

To the Editors:

I have just been reading your article setting forth the Resolution on the subject of postwar peace organization, which, of course, is neccessarily of a general character, and I am writing to suggest that when the Committee gets down to the consideration of details, it will not fail to provide that any proposed organization shall not have jurisdiction of local matters, either basically or by consent.

In referring to local matters, I have in mind such things as immigration, the distribution of suffrage rights, matters of deportation, and the like. I hope this will be done, because, notwithstanding our own constitutional limitations, we observe a constant encroachment upon the rights reserved to the states. To be sure, many of these encroachments are not direct, but the practical effect is encroachment, nevertheless, and I do not want to see any League that is not *specifically* restricted in this respect beyond even cavil. I say "specifically" because experience has surely taught, that where there is anything left open to construction, sooner or later construction will extend the powers long beyond the original design. We must ever remember with Pope that though

> Your Plea is good, but still
> I say, beware!
> Laws are explained by men—
> so have a care.

This admonition is one that, in view of many decisions and acts of government, Congress could well bear in mind. Anyhow, I commend it to the Committee's thoughtful consideration.

GEO. WASHINGTON WILLIAMS

Baltimore, Md.

To the Editors:

Federal encroachments upon state authority and individual freedom have been to a great extent fostered and upheld by court action in indulging in presumptions in favor of the constitutionality of statutes. It seems to me that the time has come where it is imperative that some presumptions be applied in favor of the Constitution itself.

JOHN D. MILLER

New Orleans

LAWYER AND WAR AGENCIES

Continued from page 677

powers can be weighed in the light of conditions as they then exist. Even then men of good will may differ. In such event the members of the Bar can arm themselves with the arguments pro and con and, depending upon the make-up and inclinations of the individual, either discuss them objectively or advocate the side of the question they believe to be correct. The sum total of all such discussions, both objective and partisan, will necessarily have the tendency of educating the people on the principle at stake. And if the Bar can make a real contribution toward the bringing into being of an enlightened public opinion on questions of this kind, it will have fulfilled one of its highest obligations.

The ramifications of this subject are so great that it would be beyond the scope of this paper, to say nothing of the writer's capacity, to explore them further. The basic arguments for the liberty of the individual, however, are simple; they can be understood by anyone. They are founded on the fundamental concepts of human relations. For example, there are certain laws of life that are axiomatic. Prominent among these is Darwin's law of the survival of the fittest. No government can change this law; it obtains in both democratic and totalitarian states. Therefore, even if we should have totalitarian government thrust upon us, or, more accurately, if we should impose it upon ourselves, we may be quite sure that the struggle for power, position and preferred status will continue. The only difference will be that the struggle will be an unequal one in that the bureaucrats, who make the rules, will have an advantage over the common citizen. If anyone doubts this, let him look at what has happened and is happening to the individual in the totalitarian states.

Will the well informed citizen be willing to trade his individual liberty even at the risk of some economic hardship for such an existence? There can only be one answer.

THE END OF THE YEAR

Continued from page 693

ing principles, to find out and to try out methods of making them work under changed conditions; when the leaders and members of such an organization accept boldly the responsibilities of leadership and constitute themselves as rallying-points for an informed and aroused public opinion, and encourage others to do the same, such an institution can gain quite a lot of ground, in war or in peace. That is the story of 1944, as of other years.

In extending to all its readers, and especially to all men and women in uniform, the best of wishes for Christmas and the New Year, the JOURNAL knows that this holiday season will not bring gayety and festivity into all homes; but the events of 1944 may bring some cheer and reassurance of the return of those now so far away.

Notice by the Board of Elections

The following jurisdictions will elect a State Delegate for a three-year term in 1945:

Arizona	Nebraska
Connecticut	New Jersey
District of Columbia	Oklahoma
Illinois	Puerto Rico
Iowa	South Carolina
Maine	South Dakota
Michigan	Texas
Mississippi	Washington
Montana	Wyoming

The states of Indiana and Nevada will each elect a State Delegate to fill vacancies expiring at the adjournment of the 1946 Annual Meeting.

Nominating petitions for all State Delegates to be elected in 1945 must be filed with the Board of Elections not later than April 13, 1945. Forms for nominating petitions for the three-year term, and separate forms for nominating petitions to fill vacancies may be obtained from the Headquarters of the American Bar Association, 1140 North Dearborn Street, Chicago. In order to be timely, nominating petitions must actually be received at the Headquarters of the Association before the close of business at 5:00 P.M. on April 13, 1945.

Attention is called to Section 5, Article V, of the Constitution, which provides:

> Not less than one hundred and fifty days before the opening of the annual meeting in each year, twenty-five or more members of the Association in good standing and accredited to a State (or the territorial group) from which a State Delegate is to be elected in that year, may file with the Board of Elections, constituted as hereinafter provided, a signed petition (which may be in parts), nominating a candidate for the office of State Delegate for and from such State (or the territorial group.)

Unless the person signing the petition is actually a member of the American Bar Association in good standing, his signature will not be counted. A member who is in default in the payment of dues for six months is not a member in good standing. Each nominating petition must be accompanied by a typewritten list of the names and addresses of the signers as they appear upon the petition.

Nominating petitions will be published in the next succeeding issue of the American Bar Association Journal which goes to press after the receipt of the petition. Additional signatures received after a petition has been published will not be printed in the Journal. Special notice is hereby given that no more than fifty names of signers to any petition will be published.

Ballots will be mailed to the members in good standing accredited to the states in which elections are to be held within thirty days after the time for filing nominating petitions expires. State Delegates elected to fill vacancies take office immediately upon the certification of their election.

Board of Elections
Edward T. Fairchild, Chairman
William P. MacCracken, Jr.
Laurent K. Varnum

Current Events

American Bar Association Announces Radio Program

The American Bar Association has gone on the air for the first time with a radio program entitled "Let's Face the Issue". The initial broadcast was heard on Sunday, November 26, from 5:00 to 5:30 P. M., E. W. T., over the Mutual coast-to-coast network on 211 stations. The program is for the purpose of stimulating thought and action on current problems, generally of a non-legal character.

Each week two outstanding authorities on particular questions will exchange views and will be cross-examined by two members of the Bar and of the Association.

Moderator for the new series is Leland Rex Robinson, well-known economist, educator and business consultant, and former president of Town Hall, the organization which originated America's Town Meeting of the Air. The director is Sherman Dryer, of the Mutual Broadcasting Company, who for a number of years was director of the University of Chicago Round Table.

Baseball and the Law

The sudden death of Kenesaw Mountain Landis, high commissioner of baseball, has occasioned universal expressions of appreciation from sports writers, club owners and players of what Judge Landis has done for our national game. It is agreed without a dissenting voice that in a field fertile for controversies, the commissioner has based his decisions on justice, has formulated them with practical wisdom and enforced them with unflinching courage.

To men of our profession the sudden passing of Judge Landis brings reflections on the extension of justice into a new field. He had won his spurs in the trial of fighting cases before court and jury. When appointed to the federal bench his chief interest was justice as he saw it. A precedent which seemed to lead towards an unjust result was of little weight.

When professional baseball fell into evil ways, when "White Sox" became "Black Sox" and distrust threatened the life of the sport which had grown to the dimensions of "big business", the owners of that business turned to Judge Landis and vested him with unlimited power to clean up the field. He accomplished that result by subjecting our national game to the rule of justice and the law of fair play. In that field the rights of owner, player, and "fans" were wisely balanced and his decision fearlessly enforced.

So it was that law came to baseball.

The Resignation of the Secretary of State

The Honorable Cordell Hull, who for twelve years has occupied the position of Secretary of State, has tendered his resignation to the President because of failing health. The resignation was accepted with expressions of appreciation and commendation by the President.

Secretary Hull has from the very beginning of his occupancy of his high and important office been devoted to the establishment and maintenance of international relationships in such a manner as to promote peace. Even before he became Secretary of State his voice and vote in the Senate indicated his full appreciation of the views to which he gave such devoted service later on in his career.

It is notable that in the last presidential campaign Governor Dewey constantly voiced his approval of Secretary Hull's efforts and services.

The arrangements which have been made to secure the aid and cooperation of Secretary Hull in an advisory capacity so that his counsel and cooperation may be given to his successor, Edward R. Stettinius, Jr., and to the Department of State, is a cause for sincere congratulation.

Commencement at the Judge Advocate General's School

The Judge Advocate General's Department now constitutes the largest law firm in the world, declared Major General Myron C. Cramer, the Judge Advocate General of the Army, in a commencement message Friday, November 10, to 102 officers of graduating classes at the Judge Advocate General's School at the University of Michigan, Ann Arbor, Michigan.

Thirty-two states, Puerto Rico and the District of Columbia were represented in the membership of the classes graduated. Since the establishment of the JAG schools, 1501 officers have completed the courses and have been assigned to the various activities of the Judge Advocate General's Department throughout the United States and in the overseas theaters of operation.

The courses given at the school are for the purpose of training officers in the subjects of military justice, the rules of land warfare, military government, claims against the War Department, government contracts, military affairs, etc.

Officer candidates must be twenty-eight years of age and must first have completed basic military training before being accepted for the school. Those who have had at least four years of active law practice are given preference.

Missouri Bar Integrates

The Missouri Bar has integrated by Supreme Court Rule 40 and becomes the twentieth integrated state bar in the country.

At the last annual meeting of the Missouri Bar Association held at St. Louis on September 30, the newly elected Board of Governors of the Missouri Bar elected the following officers: Charles L. Carr, Kansas City, president; Walter R. Mayne, St. Louis, vice president; James A. Potter, Jefferson City, secretary; Marion Spicer, Jefferson City, treasurer. Rule 40 provides for an executive committee consisting of the president, vice president, secretary and three members of the Board of Governors, one from each of the three appellate court districts in Missouri. The three additional members chosen are Harry Carstarphen, of Hannibal, for the St. Louis Court of Appeals district; John W. Oliver, of Kansas City, for the Kansas City Court of Appeals district, and Warren Turner, of Springfield, for the Springfield Court of Appeals district.

CHARLES L. CARR
President, Missouri Bar

Arrangements for Annual Meeting

An invitation extended by the Cincinnati Bar Association to the American Bar Association to hold the 1945 Annual Meeting in Cincinnati has been accepted. The meeting will be held during the week beginning September 10. Announcement will be made in a subsequent issue of the JOURNAL concerning headquarters hotel and other arrangements.

Judicial Conference

(Continued from page 707)

Pre-trial procedure in the federal courts was strongly endorsed by the approval of the following conclusions of Judge Parker's committee: (1) That there should be a pre-trial hearing in every civil case; (2) that the use of this practice in criminal cases should be left to the discretion of the individual judge; (3) that settlements should be considered an incidental rather than a primary objective; (4) that the hearing should be held in court or in chambers as each judge might decide for himself; (5) that the pre-trial hearing should preferably take place from one to three weeks before the trial; (6) that the pre-trial order should be drawn up while the parties are present; (7) that the Attorney General be requested to call the attention of all United States attorneys to the benefits of the pre-trial hearing and to the desirability of cooperation therein; (8) and that judges unfamiliar witlf the practice be afforded aid in its use either by assigning to their districts judges experienced in the holding of pre-trial hearings, or by temporarily assigning those desiring aid to districts where the practice is in active operation.

A proposal was presented that United States Commissioners be given power to accept pleas of guilty and impose sentences in petty cases. The Conference instructed the Director to circulate the proposal among the circuit and district judges to ascertain their views.

A proposal was also made that in districts not having a city of more than 500,000 population the district court be authorized to appoint counsel to represent poor defendants and compensate them out of public funds at a rate of not more than $25 a day and expenses, with a maximum total of $3,000 for the district. This proposal was directed to be circulated among the circuit and district judges for an expression of views.

LEW WALLACE

Continued from page 682

Governor of New Mexico, and had an extraordinary sale. It has been estimated that approximately two million and a half copies have been sold, editions having been brought out in almost every tongue, including those of the Orient. Dramatized, it enjoyed a phenomenal popularity —over 2500 performances were given at the New York Academy of Music alone. It played no small part in liberalizing the hard-shell Calvinistic prejudices northwest of the Alleghanies and among village people who had read no other novel, with the possible exception of *Uncle Tom's Cabin*.

In 1881 Wallace was appointed Minister to Turkey, with the recommendation that he produce another book with its action centered in Constantinople. His commission bore the endorsement *Ben Hur* in the President's handwriting. The four years of his mission to The Sublime Porte were congenial ones. He found life at the Ottoman Capital under Abdul Hamid full of dramatic interest and exotic charm. There was, in fact, an oriental strain in Wallace and his tastes ran somewhat to the medieval. He kept faith with Garfield by producing a book built around the Wandering Jew and called *The Prince of India,* but the latter never lived to see it published. With the advent of the new administration on March 4, 1885, Wallace lost no time in tendering his resignation. "At twelve o'clock according to my Santa Fé nickel chronometer, the regulator of the world's time" it was dispatched to Cleveland.

He took an active interest in the campaign of 1888, his major contribution being the *Life of Harrison*. The work suffered from the usual defects of political propaganda. The new President was prompt in offering Wallace the mission to Brazil but he declined on the plea of family reasons.

His last years were spent in peace and contentment. His family life was a happy one, his financial situation was assured, and he tasted with relish the esteem in which he was held. His mind was a storehouse of the treasured memories of many people, of far lands and stirring action. He followed the eventful march of time with unflagging interest. A friend, thinking of some memento he would like, expressed a desire for "the spectacles General Wallace looked through at the world."

On the death of an old comrade he wrote, "He is but a day's march ahead of us; we will overtake him soon." On February 15, 1905, that prediction was fulfilled.

LAWYERS ASK RETENTION OF WORLD COURT

Continued from page 674

George Rublee, Washington, legal advisor to American delegation to the London Naval Conference of 1930

David A. Simmons of Houston, Texas, President of the American Bar Association

Henry U. Sims of Birmingham, Alabama, a former president of the American Bar Association

John M. Slaton of Atlanta, Georgia, former Governor of Georgia

M. C. Sloss, San Francisco, a former Justice of the Supreme Court of California

Reginald Heber Smith of Boston, recently a member of the American Bar Association's Special Committee to Study Post-War Proposals

W. E. Stanley, Wichita, Kansas, president of the Conference of Commissioners on Uniform State Laws

Silas H. Strawn, Chicago, a former president of the American Bar Association

Thomas D. Thacher, Albany, Judge of the New York State Court of Appeals

Guy A. Thompson of St. Louis, a former president of the American Bar Association

Arthur T. Vanderbilt of Newark, a former president of the American Bar Association

Charles Warren, Washington, D. C., authority on the history of the United States Supreme Court

Robert N. Wilkin, Cleveland, United States District Judge

Quincy Wright, Chicago, Professor of International Law at the University of Chicago

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The American Bar Association Journal takes pleasure in offering to its readers a new and revised edition of

Law Office Organization

by

Reginald Heber Smith

This attractive pamphlet describes a system of law office organization, which, Mr. Smith says, "has been in actual operation for twenty years and has worked reasonably well." He lists the following benefits: "(1) The elimination of waste has saved thousands of dollars, and a dollar saved is a dollar of added income. (2) The attorneys have been able to produce the best work of which they were inherently capable. (3) Morale and esprit de corps have been kept at a high pitch because the men believe the rules of the system are fair; indeed they have made the rules themselves. (4) That nightmare of partnerships—how to divide the profits justly among the partners—has been dispelled. That problem has always tended to be a disruptive force in partnership life; but no partner has ever left us to join any other firm. (5) Cost Control has enabled us to handle at a moderate profit a great many small cases which otherwise we should have handled at a loss or perhaps not at all. (6) We have been enabled to grow from a small group of men to a somewhat larger group."

An appendix of forms is included.

Price 50c

American Bar Association Journal

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American Bar Association Journal

Topical Index, 1944

(NOTE: THE ITEMS MARKED WITH AN ASTERISK INDICATE A LEADING ARTICLE ON THE SUBJECT)

States:

Statutes:

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Taxation:

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To serve your clients and your Civilian Defense agencies you should have the

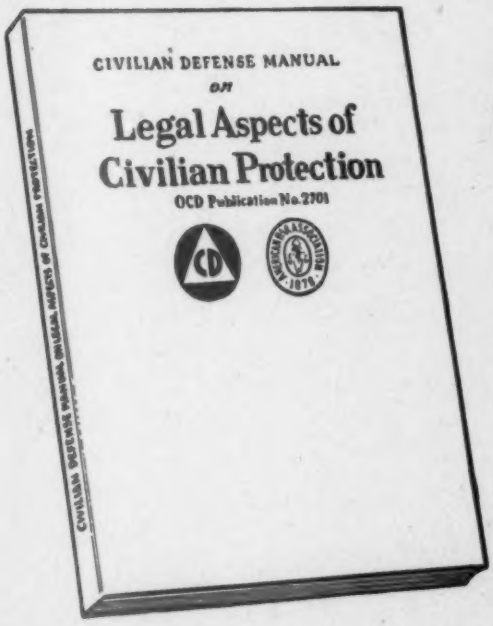
CIVILIAN DEFENSE MANUAL
ON
LEGAL ASPECTS OF CIVILIAN PROTECTION

Prepared under the auspices of the Special Committee on Civilian Defense of the

AMERICAN BAR ASSOCIATION

for the

UNITED STATES OFFICE OF CIVILIAN DEFENSE



Summary of Contents

The 240 pages of the Manual provide the guiding statutes, regulations, and court decisions, as well as the source material necessary for the lawyer concerned with Civilian Protection problems.

As long as the supply lasts this Manual will be supplied to members of the American Bar Association without charge upon application to the Association's Headquarters, 1140 North Dearborn Street, Chicago 10, Illinois, accompanied by 15c to cover the costs of handling, packaging and mailing.

SPECIAL COMMITTEE ON CIVILIAN DEFENSE

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